FEDERAL REGISTER: 45 FR 52306 (August 6, 1980)

DEPARTMENT OF THE INTERIOR
AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM)

30 CFR Subchapter J: Parts 800, 801, 805, 806, 807, 808
Surface Coal Mining and Reclamation Operations Permanent Regulatory Program; Performance Bonding

ACTION: Final rules.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) amends portions of Subchapter J of its permanent regulatory program relating to bond and insurance requirements for surface coal mining and reclamation operations. The changes revise provisions concerning the period of liability, the form of the performance bond, performance-bond requirements for long-term facilities and disturbances, and release and forfeiture of the bond. Several of the changes are in direct response to a petition for rulemaking filed with OSM, while others were generated from comments received during the petition review process.

EFFECTIVE DATE: September 5, 1980.

ADDRESSES: Copies of these amendments may be obtained from the following OSM offices:

Headquarters, U.S. Department of the Interior, South Building, Room 153, 1951 Constitution Avenue NW., Washington, DC 20240; 202-343-4728.

Region I, Thomas and Hill Building, 1st Floor, 950 Kanawha Boulevard, East Charleston, WV 25301; 303-342-8125.

Region II, Suite 500, 530 Gay Street SW., Knoxville, TN 37902; 615-637-8060.

Region III, Room 502, Federal Building & U.S. Courthouse, 46 East Ohio Street, Indianapolis, IN 46204; 317-269-2600.

Region IV, Scarritt Building, 5th Floor, 818 Grand Avenue, Kansas City, MO 64106; 816-374-2618.

Region V, Brooks Towers, 1020 15th Street, Denver, CO 80202; 303-837-5511.

Copies of public comments received on the petition for rulemaking and proposed rules discussed below may be obtained at: Office of Surface Mining, Room 153, Interior South Building, 1951 Constitution Avenue, Washington, DC 20240, (202-343-4728).

FOR FURTHER INFORMATION CONTACT: David R. Maneval, Assistant Director, Technical Services and Research, Office of Surface Mining, U.S. Department of the Interior; 202-343-4264, or Russ Price, P.E. Division of Technical Services, Office of Surface Mining, U.S. Department of the Interior; 202-343-4022.

SUPPLEMENTARY INFORMATION:

On March 13, 1979, OSM promulgated permanent program regulations as required by Section 501(b) of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87) ("the Act"). Subchapter J, Parts 800-809, of the permanent program regulations pertains to bond and insurance requirements for surface coal mining and reclamation operations. Notices pertaining to Subchapter J have been published in the Federal Register as follows: 44 FR 15385-15393 (Mar. 13, 1979), with corrections published at 44 FR 15485 (Mar. 14, 1979), 44 FR 28005-28008 (May 14, 1979), 44 FR 49673-49687 (Aug. 24, 1979), 44 FR 52098 (Sept. 6, 1979), 44 FR 53507-53509 (Sept. 14, 1979), and 44 FR 66195 (Nov. 19, 1979).

Additionally, portions of the bonding rules, as well as other permanent program rules, were suspended by announcements appearing at 44 FR 67942 (Nov. 27, 1979) and 44 FR 77455 (Dec. 31, 1979).These provisions were suspended as a result of their reevaluation in the context of pending litigation (In Re: Permanent Surface Mining Regulations Litigation , filed May 9, 1979, D.D.C. -- Civil Action 79-1144).

As a result of a petition for rulemaking filed by the Mining and Reclamation Council of America (MARC), Travelers Indemnity Company, and Green Mountain Company, ("the petitioners"), and comments received on the petition, OSM concluded that several Sections of Subchapter J needed revision. Refer to 44 FR 28005-28008 (May 14, 1979) and 44 FR 52098 (Sept. 6, 1979), respectively.

Amendments were proposed by OSM on January 24, 1980. The rules proposed January 24, 1980 (45 FR 6028-6042) and the accompanying preamble contain much of the basis and rationale for the final rules adopted herein and are hereby incorporated in this notice by reference.

In addition to the 60-day comment period ending March 24, 1980, the comment period was reopened June 27, 1980, (45 FR 43437) for 5 days to include a comment from the U.S. Department of Agriculture (USDA), Forest Service, and a discussion of an April 16, 1980, meeting held with USDA after the comment period ended. The subject of this letter was a proposed provision for early release of operator liability for reclamation, if the reclamation is conducted by a Federal, State, or independent agency as part of a research project. This request is part of an official petition process and subject to a separate rulemaking. The petition was published for comment June 18, 1980, (45 FR 41166) and a public meeting was held on July 10, 1980.

The final rules adopted today resolve issues identified in the petition submitted by MARC, issues suspended by OSM as directed by the U.S. District Court for the District of Columbia, and issues raised in comments received during the comment periods and public meetings of the petition for rulemaking and proposed amendments. Those amendments proposed January 24, 1980, (45 FR 6028) for which no substantive comments were received are being adopted today as final amendments to Subchapter J of the permanent program regulations except for Section 806.11(a), which was changed to include another type of bonding method. Other comments were received which were not pertinent to the issues opened under this rulemaking. These comments, although considered, are not addressed in this document.

The bonding rules, as amended in this notice, will serve as the Federal standard for State Permanent Regulatory Program submissions required by 30 CFR Chapter VII, Subchapter C, Part 732. However, because 22 State programs are currently being reviewed by the Secretary and others have approval, States will be given an opportunity at a later date to change their programs to reflect the amendments adopted today. If a State's program has been approved, OSM will notify the State of any changes it considers necessary and the State will have 6 months to make changes that can be made by a change in State regulations. The State will have until the end of its next legislative session to make the change if a change in State law is required.

For State programs which are pending an initial decision by the Secretary or which have been resubmitted on the basis of such an initial decision, the final decision on the programs will be based on the regulations as they existed when the State programs were submitted, subject only to changes that have been mandated by the Court. States may, at any time, propose to amend their programs to comply with these new amendments and, subject to requirements for public comment, the Secretary may approve amendments in accordance with 30 CFR 732.17. In addition, program submissions which contain provisions incorporating these new rules or provisions based on the proposed rules not adopted today may be approvable under 30 CFR 806.11(b) (formerly 30 CFR 806.11(c)), alternative bonding schemes, or under 30 CFR 731.13, the "state window" provision, if the required showings are made. The States will be advised of further changes that may be required at the time of the Secretary's decision on their programs and will be allowed 6 months or until the next legislative session to accomplish the changes. {52307}

DISCUSSION OF COMMENTS ON PROPOSED RULES ISSUED JANUARY 24, 1980 (45 FR 6028-6042)

PART 800 -- GENERAL REQUIREMENTS FOR BONDING OF SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER REGULATORY PROGRAMS

SECTION 800.5 - DEFINITIONS .

OSM proposed changes in the definitions of the terms "self-bond" and "collateral bond" to coincide with changes in the self-bonding and collateral-bonding regulations that were made in response to the issues raised by the petitioners and other commenters. Many comments were received on the proposed changes. One commenter noted that in the proposed amendment of the definition of collateral bonds, negotiable bonds of the United States or municipalities were included, but negotiable State bonds were not. He pointed out that State bonds were considered a valuable asset in bonding collateral and should be included. As a matter of fact, the definition of collateral bonds in the March 13, 1979, rulemaking included

negotiable State bonds as well as those of the United States and municipalities. State bonds were unjustifiably omitted from the amended definition, and OSM is adopting a definition of collateral bond which includes negotiable State bonds.

Another commenter pointed out that the definition of collateral bonds includes irrevocable letters of credit issued by a bank permitted to do business in the United States. However, he pointed out that some State laws may allow only those banks incorporated or authorized to do business in the State to issue letters of credit. This restriction could preclude a meaningful bond option in the form of letters of credit, and local banks with limited credit capacity might be unable to meet the needs of the coal mining companies. In order to remedy this situation, the commenter suggested that the regulations include a provision permitting letters of credit to be issued to OSM in behalf of the regulatory authority. OSM can find no legal basis whereby it could undertake to act as agent for a State regulatory authority in the manner suggested. Moreover, OSM believes that the States, not OSM, should determine whether or not to allow letters of credit from out-of-State banks. If a State's regulations prohibit banks that are not incorporated or authorized to do business in the State from issuing letters of credit, then the State must decide whether or not to change its laws. Therefore, the provisions for allowing any bank in the United States to issue letters of credit is retained for use with State discretion, and the recommended change has not been accepted.

Another commenter requested that the requirements for letters of credit and self-bonding be clarified so that the States have the option of authorizing these methods of bonding but not be obligated to use them. OSM believes that it is clear that letters of credit and self-bonding are options that the States may elect to use but are not required to. In Section 806.11, letters of credit and self-bonding are listed as two of five approved methods of bonding, but any one of the five types alone is sufficient, as is supported by the word "or." As proposed Section 806.11(a) states, "The regulatory authority may allow for (1) a surety bond, (2) a collateral bond, (3) establishment of an escrow account, (4) self-bonding, or (5) a combination of these bonding methods" (emphasis added). The regulatory authority is not required to utilize either letters of credit or self-bonding, but rather it may select any of the types of bonding individually, or in combination. Therefore, no additional clarification has been provided in the final rules.

A State commenter proposed that the self-bond definition be rewritten to clarify the term as follows: "Self-bond means the unsecured bond of the applicant accompanied by one or more agreements executed by other persons indemnifying the regulatory authority against loss by reason of the applicant's failure to fulfill its bond." OSM intends to further study the options for securing performance under self-bonding and is not now eliminating the requirement that self-bonds be secured. Therefore, this request has been deferred pending the outcome of the proposed study. The definition of the term "self-bond" is not amended at this time.

SECTION 800.11 - REQUIREMENTS TO FILE A BOND .

Cumulative bonding was proposed to allow flexible use of bonds and reduce the amount of bond coverage necessary if bond release and reinstatement on subsequent increments can be sequenced to an operator's advantage. OSM received many comments on the proposal to allow bond amounts to be calculated on a cumulative basis. One commenter stated that cumulative bonding was an important addition to other bonding alternatives. Another stated that cumulative and incremental bonding are needed, but that the bonding rules need further revision for the regulatory program to be effective, efficient, and of least cost to the public. Another noted that although cumulative bonding should prove beneficial in theory, record keeping would be "horrendous" and timing on bond release and filing of new bonds would have to be exact. One commenter was concerned about the adequacy of a bond amount calculated cumulatively to cover the full cost of reclamation. Another commenter addressed the necessity of correctly projecting the acreage to be disturbed in order to ensure a proper bond amount. A State commenter maintained that, except for the entire permit area, bond amounts should not be tied to acreage, as is done under incremental or cumulative bonding. The State believes that tying bond amounts to acreage under incremental and cumulative bonding is confusing because these regulations seem to imply that bonding obligations apply only to a particular area and do not extend to the entire permit area. The State also asked whether cumulative bonds would circumvent the bond-release criteria of Part 807 and would be released automatically to float to the next area to be disturbed.

OSM considered three options: (1) Retain the original provision of Section 800.11 as published March 13, 1979, (2) adopt revised regulations for Section 800.11 as proposed January 24, 1980, or (3) adopt revised regulations for Section 800.11 as proposed by commenters. OSM believes that the most important factor in applying cumulative bond is the achievement of the proposed schedule by which affected areas in various phases of reclamation and areas not yet disturbed are included or excluded in the amount of bond coverage. Of course, variation of the bond amount cannot be allowed in a manner that would ever result in the amount forfeitable falling below the actual estimated full cost of completing reclamation on all disturbed areas.

OSM agrees that keeping records, timing bond release and filing of new bonds, determining accurate bond amounts to cover the cost of reclamation, and projecting the areas to be disturbed could become problems for the regulatory authority. However, OSM believes that most of these problems are inherent under any bonding system, and are not unique to cumulative bonding.

Timing on bond release and the filing of new bonds is critical and is based on the successful completion of reclamation according to the proposed schedule. Bond release under cumulative bonding is subject to timing and other criteria of Part 807 such as notification, hearings, and inspection. OSM believes that under cumulative bonding, it is to the operator's monetary advantage to complete reclamation on schedule and to fulfill the other requirements of Section 800.11(b)(2). Obtaining bond on additional acreage will be difficult and costly for the operator if reclamation on previous acreage has not proceeded on schedule. In addition, the operator could face bond forfeiture under Sections 808.13(a)(1) and (2) and 808.13(b)(3). Consequently, OSM believes that an operator choosing cumulative bonding would have sufficient vested interest to proceed with reclamation as scheduled, thus minimizing problems for the regulatory authority.{52308}

Determination of accurate bond amounts to cover the cost of reclamation and protection of areas to be disturbed are also critical and are problems inherent in other bonding systems. Operators who elect a cumulative bonding schedule must adhere to requirements of Parts 805 and 806 to ensure that the bond amount is adequate to meet the costs of reclamation. In addition, the operator must comply with Section 800.11(b)(2), which provides that the operator "must identify the initial and successive incremental areas for bonding on the permit application map submitted for approval as provided in 30 CFR 780.14 and shall specify the proportion of the total bond amount required for the term of the permit which will be filed prior to commencing operations on each incremental area." Thus, the regulatory authority can use criteria in Part 805 to determine adequate bond amounts and in Section 800.11(b)(2) to project areas to be disturbed.

Concern about liability under cumulative and incremental bonding is justifiable. However, Section 806.12(c) and proposed Section 808.12(c) clearly provide that liability under any bond (whether full, incremental, or cumulative) can extend to cover the entire permit area. Cumulative bonds are not released automatically, nor do they "float" to the next increment. The residual bond amount after release may be used on a successive increment at the discretion of the regulatory authority. Cumulative bonds, as with other types of bonds, are subject to the bond-release criteria of Part 807 and bond-forfeiture requirements of Part 808. Therefore, OSM believes that no further clarification is necessary under Section 800.11 concerning bond-liability or bond-release requirements.

On the basis of the foregoing discussion, and the frequency of inspections required by the Act, OSM has selected option 2. Cumulative bonding will allow an operator to provide a single bond for a permit area including all or part of the increments at differing levels of mining activity. Unlike bonds on separate increments, the forfeitable amount of the cumulative bond may vary as areas are added or deleted. As in incremental bonding, the total bond posted must be sufficient to assure completion of the reclamation plan by the regulatory authority in the event of forfeiture.

OSM proposed amendments to Section 800.13(a) and (d) regarding forms for filing performance bonds and limiting the acceptance of self-bonds in lieu of surety or collateral bonds to instances where the permittee meets the requirements of Section 806.14 and any additional requirements for a State or Federal program. No comments were received on these amendments. Consequently, these amendments are adopted without change.

PART 801 -- BONDING REQUIREMENTS FOR UNDERGROUND COAL MINES, COAL-PROCESSING PLANTS, ASSOCIATED STRUCTURES, AND OTHER COAL-RELATED LONG-TERM FACILITIES AND STRUCTURES

A new Part 801 was proposed at the suggestion of the petitioners to distinguish between a surface mine (short duration) bonds and the long-term bonding aspects of underground mines and coal-related processing facilities. Commenters were concerned with the need for this distinction and in general agreed with the provisions.

SECTION 801.11 - APPLICABILITY .

This Section establishes that the Part applies to portions of coal mines and coal mining operations which generally have a life in excess of 5 years and continually disturb the same surface areas, operations such as underground mines, coal-processing plants, refuse areas, and coal-loading facilities.

Section 801.11(a)(1). -- A commenter referring to proposed Section 801.11(a)(1) maintained that if "continuously disturb the surface" is a condition of this Part, then the subsidence-control measures to be constructed under Section 801.16(a) should not be included within its scope since, when completed, construction does not continue to disturb the surface. The intent of this Part is to include bond coverage only for construction of surface measures to prevent subsidence (as opposed to purely underground construction, such as backstowing), and therefore Section 801.11(a)(1) has been revised to include the cost of construction of the facilities enumerated under Section 801.16 as calculated as part of the bond amount under Section 805.11.

Section 801.11(b) . -- This Paragraph as proposed intended to allow those operations listed in Section 801.11(a), when conducted on a larger area at a surface mine, to be bonded under the method for long-term operations as a separate increment of the surface mining permit. This does not mean that a separate permit must be issued for both the surface and long-term operations.

SECTION 801.13 - PERIOD OF LIABILITY .

This Section provides for continuous bond coverage by requiring that bond extension or replacement be posted 120 days prior to expiration of any bond. A commenter referring to the proposed language felt that provisions should specify an "extend or pay" clause, especially for letters of credit. This would ensure continuous coverage and all parties would be aware of the conditions of bond coverage. Section 801.13 has been clarified to specify the terms of liability on long-term operations and provide for continuous coverage throughout the liability period by requiring replacement or extension of bond coverage subject to forfeiture for failure to comply. This aspect is particularly important in operations nearing the end of their useful productive life. An operator may find increased difficulty in obtaining a replacement bond in this period. This provision requires that the operator and surety, if applicable, consider the consequences of forfeiture if bond coverage through extension or replacement is not provided. Since bonds must provide continuous coverage until replaced or released, the option of developing an escrow account or guarantees provided by the "Combined surety/escrow method," Section 806.17, may be more acceptable, especially toward the end of the operation.

A commenter pointed out that this Section apparently requires a new bond to be posted to renew a permit and recommended that provisions be added for extending the current bond for the renewal term. The option of continued coverage is acceptable to OSM and would afford the same degree of coverage while giving maximum flexibility to extended bond coverage. This provision has been incorporated in Section 801.13(b) by deleting the word "new" in the final rule and allowing extension of current coverage. {52309}

SECTIONS 801.14 AND 801.15

No comments were received on proposed Sections 801.14 and 801.15. Therefore, these Sections have been incorporated into these final rules.

SECTION 801.16 - SUBSIDENCE AND MINE DRAINAGE.

This Section requires that surface measures constructed to prevent subsidence be bonded. Since the bonded surface area of an underground mine may be isolated from surface-owners' property, the inspection of these surface measures may require access to private property.

Section 801.16(a) . -- One commenter posed the problem of what will happen if a property owner refuses to permit the regulatory authority access to his or her property for the purpose of inspecting surface facilities proposed to be released from bond coverage. No suggested remedy was offered. The Act requires surface disturbances to be bonded, and since the surface measures provide protection to the surface owner's property, it would appear to be in the best interest of both the operator and the owner to ensure proper Construction to prevent subsidence and allow bond release. If the surface owner denies access for inspection, the regulatory authority should advise the surface owner of the pending bond release and request his or her comments. If no comments are received, the bond may be released. Care should be taken that all correspondence is by certified mail with return receipt. A specific provision has been added to Section 801.16(a) to provide guidance for bond release on surface measures if an owner refuses to allow inspection by the regulatory authority. It should be emphasized the although surface measures are taken, unplanned subsidence continues to be an operator responsibility under Section 817.124(b).

Several industry commenters requested the addition of an exemption from bonding of surface measures when using conventional room-and-pillar mining methods similar to that provided in Section 817.121. They felt that since this mining

method is usually conducted so as to preclude subsidence, no bond should be required. OSM feels that this Section clearly requires no bond if a method to control subsidence which does not disturb the surface is used. OSM agrees with this rationale, but feels that a blanket exemption is unnecessary. Under the room-and-pillar method, no surface measures are taken whether planned subsidence occurs or not, since the method is in itself a measure to prevent subsidence. However, if room-and-pillar methods cause unplanned subsidence, and damage to surface land use occurs, the provisions of Section 817.124 apply. Therefore, OSM feels that an exemption for room-and-pillar mining is not required under the applicability of this Part. This provision is not considered to conflict with Section 817.121, which authorizes the room-and-pillar mining method.

One State commenter pointed out that the State plans to require monitoring of subsidence regardless of whether subsidence is expected or not, and that their bond amount would include monitoring-survey costs. OSM feels that bonding of ongoing surveys to monitor subsidence may be included as part of more stringent control measures required under State reclamation-plan requirements, but that this requirement would exceed the bonding requirements of this Part if no subsidence is planned. Thus, a provision of this nature in the state program would be considered more stringent. Sections 817.121-817.124 provide insurance coverage or financial coverage for reimbursement for any damage caused by unplanned subsidence. OSM believes that only quantifiable actions fall under bond coverage and that unknown, inestimable actions or ongoing monitoring are beyond the scope of performance bonding. Therefore, no provision for including monitoring-survey costs in the bond amount has been added to this Part.

Section 801.16(b). -- This Section as proposed would have required bonding of surface facilities constructed to provide treatment of mine drainage. Such facilities may remain indefinitely to treat drainage or may be removed with the termination of mining. If revegetation has progressed satisfactorily and a sedimentation pond is no longer necessary, the impoundment may be removed. A commenter requested clarification of the extension of the liability period if sedimentation ponds and impoundments are to be removed as part of the postmining land use. Section 805.13 of the proposed regulations requires an extension of the liability period of 5 or 10 years if the impoundment is removed during the original-liability period. The regulations provide two alternatives to the regulatory authority. First, it may separate the area disturbed and reclaimed for removal of the impoundment as a segment of the bonded area as provided under Section 805.13(c); second, it may call for or authorize removal of the impoundment and reclamation of the area early in the original liability period as long as the conditions of Section 807.12 are met with respect to revegetation, sediment control, and runoff. Conditions of Section 807.12(e)(2) (i) and (ii) must be met with respect to performance standards for sediment control and runoff, and an adequate standard of vegetation established before a sedimentation pond may be removed. The revegetation work on the impoundment area is subject to the full applicable liability period, thereby requiring extension. However, early removal in the original liability period will minimize the extended period.

OSM believes that no specific provision is required to address this problem, that adequate flexibility exists in the provisions of Section 805.13 for extension of liability on either permit or increment, separation of bonded areas, or approval or reclamation practices to allow a regulatory authority to handle this condition on a case-by-case basis. However, additional language has been added to clarify the intent that areas from which impoundments have been removed are subject to the liability period in determining successful revegetation.

SECTION 801.17 - BOND FORFEITURE

This Section sets forth the conditions for bond forfeiture. No specific comments were received; therefore, this Section has been adopted as proposed.

PART 805 -- AMOUNT AND DURATION OF PERFORMANCE BOND

SECTION 805.13 - PERIOD OF LIABILITY

Section 805.13(a) -- This Section requires an operator to be responsible for revegetation of the permitted area. No amendment was proposed to Section 805.13(a), but a comment was received. The USDA Forest Service pointed out that the provisions of Part 805 did not allow a research activity to accept responsibility for reclamation and relieve the operator from the bonding obligation. Research activities sometimes use abandoned mines or portions of active mines to evaluate new plant species or to conduct reclamation research. The Forest Service also proposed that an operator's liability under performance bond in Section 805.13(a) be released if the responsibility for revegetation has been assumed by Federal or State agencies or entities for reclamation, research activities, or demonstration of reclamation technology, provided that the responsible agency or entity will provide for normal reclamation. The same proposal is included as part of a formal petition

to amend rules issued June 18, 1980 (45 FR 4116) considered for public comment and discussion under proposed rulemaking. Therefore, OSM has elected not to make any changes herein. {52310}

Section 805.13(b)(1). -- This Paragraph was proposed in order to adapt the revegetative liability provisions of Section 816.116(b) to those of bonding liability as required by Section 509 of the Act. In February 1980, the U.S. District Court for the District of Columbia ruled that initiation of the liability period, as defined in Section 816.116, was inconsistent with Section 515(b)(20) of the Act. Therefore, the proposed change will not be made. The bond liability period will commence after the last year after augmented seeding, fertilization, irrigation, or other work consistent with Section 515(b)(20) of the Act. Also, this Section extends the liability period if augmented practices are applied.

Section 805.13(b)(2). -- This Paragraph appeared in the proposed rules in response to petitioners who felt that certain "good husbandry" practices should be allowed as an incentive for an operator to continue reclamation efforts on an area. The provision requires a regulatory authority to approve and document acceptable practices as part of the initial or amended permit which if exceeded will constitute augmentation.

Section 805.13(b)(3). -- Comments were received discussing whether or not to allow selective husbandry practices without extending the period of bond liability. Most commenters felt that this provision provides essential clarification of factors which might extend the liability period. Others felt this provision was required to allow good conservation practices without punishment. A few commenters felt that any seeding, fertilization, or irrigation is contrary to the Act and should not be allowed. It is important to note that the distinction between augmented and normal conservation practices must be identified and that OSM requires that practices be documented and supported as normal for similar land uses in the geographic area in order to be considered. OSM proposed that Section 805.13(b)(3) be amended because it believes that permanent reclamation success may occasionally require selective husbandry practices exclusive of augmented seeding, fertilization, or irrigation. Therefore, such practices may be allowed if the permittee can demonstrate that discontinuance of such measures after the period of liability expires will not reduce the probability of continuous permanent revegetation success. Corrective action such as pest and vermin control, pruning, and repair of any rills and gullies, and any reseeding and/or transplanting specifically necessitated because of these actions, should not require reinitiation of the extended liability period if such practices are completed within the first part of the applicable liability period.

Section 805.13(c). -- This proposed Section provided that a portion of a bonded area requiring extension of the liability period might be separated from the original area and bonded separately, if approved by the regulatory authority. It was added at the suggestion of the petitioners to allow a portion of a bonded area to be extended instead of extending bond liability and delaying bond release on the entire area. Commenters generally supported the provisions of Section 805.13(c), but felt the terms and conditions needed some clarification. One commenter indicated that the word "contiguous" in Section 805.13(c)(2) is confusing and asked whether the term meant that such an area must be a single, distinguishable parcel rather than several scattered parcels. The same commenter also believed that the regulatory authority should be given the discretion of allowing severance of more than one extended-liability parcel.

OSM interprets "contiguous" to mean being in actual contact. Acceptance of the severance of a segment from the whole also calls for it to be isolated and distinguishable. When combined OSM believes these provisions sufficiently define the new area to be bonded. Liability may be extended on several parcels that have been determined to be insignificant, as a whole, to the entire bonded area if they are limited to distinguishable, isolated segments of the bonded area and are not scattered or intermittent occurrences throughout the entire bonded area.

Section 805.13(e). -- This Paragraph was proposed to insert a provision to exempt a bonded area from general revegetation requirements if intensive agricultural land use is approved. Plaintiffs in a suit in the District Court for the District of Columbia (In Re: Permanent Surface Mining Regulation Litigation filed May 9, 1979 D.D.C.-Civil Action 79-1144) contended that this reference to an exception to the revegetation standards of Part 816 provided too much latitude in waiving specific revegetation standards. The Department agreed and informed the Court that this Paragraph would be amended to exempt the general revegetation standards only if an intensive agricultural land use was approved. No comments were received. Therefore, this Paragraph has been adopted as proposed.

Section 805.13(f). -- Proposed Paragraph (f) was added at the request of commenters to the petition who suggested that the implementation of the postmining land use is not a requirement of the bond.

A comment was received objecting to the proposal that excludes bonding the implementation of an approved postmining land use. OSM has referred to Section 515(b)(2) of the Act and has determined that the operator is responsible only for restoring the land to a condition capable of supporting the proposed postmining land use; that is, those reclamation

actions specified in the reclamation plan. Although the objector has a good point, the statute does not support that interpretation, and the Section is adopted as proposed.

Section 805.13(g). -- Paragraph (g) as proposed would have provided additional clarification of the provisions of Paragraph (c) with respect to segmenting a bonded increment. No specific comments were received, and this Paragraph is adopted as proposed.

SECTION 805.14 - ADJUSTMENT OF AMOUNT.

Changes in Section 805.14(a) and (b) were proposed at the request of the petitioners to include notification of surety as well as permittee in bond adjustments. OSM proposed notification of all persons involved in bond coverage, as well as the surety and permittee, the other persons to be anyone with a property interest in bond collateral.

Section 805.14(a). -- One commenter suggested that the phrase "or other persons involved in bond coverage" should be replaced with "permittee, surety, or any person with property interest in collateral offered as bond coverage." OSM concurs that this change would eliminate any misconception such as the commenter apparently experienced. The commenter rationalized that any member of the public may feel he or she has a right to request a bond reduction or t receive notice of proposed bond adjustment, because the entire public is indirectly involved in bond coverage due to public-hearing requirements for bond release, and that this provision could require extensive notification duties and delay bond readjustments. OSM feels that the commenter misread the regulation, but has agreed to amend the rule in order to avoid any further confusion. This change in Section 805.14(a) has also been inserted in Section 805.14(b).

PART 806 -- FORM, CONDITIONS, AND TERMS OF PERFORMANCE BONDS AND LIABILITY INSURANCE SECTION 806.11 FORM OF THE PERFORMANCE BOND.

Section 806.11(a). -- Paragraph (a) as proposed listed alternative bonding methods which a regulatory authority could adopt for bond coverage. No comments were received on this Paragraph. However, in adopting the final rule an additional method, combined surety/escrow bonding, has been added. The specific requirements of this alternative are explained under Section 806.17 herein. {52311}

Section 806.11(b) [originally Section 806.11(c)]. -- Self-bonding was proposed as a separate Section 806.14 at the request of commenters on the petition who stated that, given the complexity and length of this Paragraph as originally promulgated, the provisions might be more easily addressed if self-bonding were separated.

OSM proposed to delete existing Section 806.11(b) and issue it as a new Section 806.14 and to redesignate Section 806.11(c) as Section 806.11(b). Comments and recommendations were requested on bonding alternatives that would better implement Section 509(c) of the Act for approving bonding alternatives. OSM received no substantive comments on the proposed redesignation. Therefore, OSM has redesignated Section 806.11(c) as Section 806.11(b) with no change in the text. No comments were received suggesting new or innovative alternatives to present bonding methods.

SECTION 806.12 - TERMS AND CONDITIONS OF THE BOND.

Section 806.12(e). -- This section of the permanent regulations promulgated March 13, 1979, contains terms and conditions of surety bonds. These provisions require the term of the surety bond to last for the life of the mine, noncancellation provisions, and limits on the amount a surety can post. Although Section 806.12(e) was not opened for comment or proposed for amendment, a comment concerning the term of the bond was received and testimony heard that cited the restrictions of this section as detrimental to surety involvement in bonding of surface coal mine reclamation operations. A new Section 806.17, "Combined surely/escrow bonding," has been added authorizing a provision for variation of surety liability when coupled with an escrow-bond replacement.

Sections 806.12(e)(6)(iii) and 806.12(g)(7)(iii). -- These paragraphs as proposed would provide a compliance period of up to 90 days in which an operator could replace bond coverage if it is lost through bank or surety incapacity. Only favorable comments were received, and these sections are added as proposed.

806.12(g)(i). -- Paragraph (g)(2) as proposed provided that letters of credit be irrevocable, but permitted withdrawal if approved by the regulatory authority as part of the permit and if replaced with other suitable collateral. Commenters felt that clarification of the proposed rule regarding the terms and conditions of the rules governing the use of

letters of credit was necessary. This was true both for letters of credit for surface mines and of renewal of bonds under Part 801. Commenters proposed alternative language that incorporates an "extend or forfeit" provision. OSM has considered the comments on this issue and has adopted the provisions by the Commenter under section 806.12(g) to clarify the continued use of letters of credit as follows:

(1) Letters of credit are irrevocable during their terms and not indefinitely irrevocable or without termination date.

(2) Letters of credit used under Part 801, which are subject to forfeiture and collection by the regulatory authority if a suitable alternative or extension of the letter of credit is not provided 30 days prior to withdrawal, have been specified in the rule to provide specific requirement for continuous bond coverage.

Section 806.12(h). -- This new section contains rules governing acceptance of real and personal property as collateral. The provisions of Section 806.12(h) were proposed as suggested by commenters who cited the value of real and personal property as bond collateral and objected to the current restriction of this valuable asset to self-bonding. Therefore, this provision was proposed as a separate paragraph in Section 806.12. It was expected that this provision could create a problem for some States, and that the type and magnitude of the problem might vary from State to State. Comments by States, in particular, were requested regarding problems which might be anticipated in liquidating real or personal property and whether such liquidation could be handled within their administrative operations. Only one State indicated that liquidation would impose an excessive administrative burden under its practices. Consequently, OSM believes those States that have no difficulty with this provision or that experience problems which do not create excessive burdens should be allowed to accept real and personal property as collateral subject to the restrictions on value, quality and acceptable collateral in the Federal rules.

Section 806.12(h) proposed January 24, 1980, has been redesignated in the final rules as follows:

Proposed	Has been adopted as
806.12(h)(2)(iii)(c)	806.12(h)(3)
806.12(h)(2)(iv)	806.12(h)(4)
806.12(h)(2)(iv)(A)	806.12(h)(4)(i)
806.12(h)(2)(iv)(B)	806.12(h)(4)(ii)
806.12(h)(2)(iv)(C)	806.12(h)(4)(iii)
806.12(h)(2)(iv)(D)	806.12(h)(4)(iv)
806.12(h)(2)(iv)(E)	806.12(h)(4)(v)

Section 806.12(h)(1). -- This section as proposed limited real and personal property used for collateral value to property located in the State where the mining is conducted. This provision was restrictive so that a State would have the legal authority to attach and liquidate land in that State in the event of forfeiture. A commenter recommended amendment of proposed Section 806.12(h)(1) to allow the perfected first-lien security interest in personal property to include personal property not necessarily located in the State in which mining will be conducted. OSM has determined that the regulatory authority should have flexibility to determine whether to accept first-lien security interest in personal property not located in the State in which mining will be conducted. Section 806.12(h)(1) has been changed to allow the regulatory authority this flexibility. Regulatory authorities are cautioned to consider very carefully the degree of security involved in accepting property outside the State for collateral bonding purposes and, in particular, their ability to locate and gain possession of property and the difficulty they would experience in liquidating the properties in the event of forfeiture of bond.

Section 806.12(h)(2)(ii). -- This section proposed that evaluation of property at fair market value be determined by appraisers appointed by the regulatory authority. One commenter suggested that companies be allowed to select independent appraisers certified in the State in which the property is located. Appraisers appointed by the regulatory authority would be appropriate, the commenter suggested, only in those instances in which the authority felt it was necessary to challenge the appraisal of a company-selected appraiser. Other commenters recommended one appraisal from the permittee and one by the regulatory authority, with the average value binding. OSM in considering these recommendations has accepted them in part. The wording of Section 806.12(h)(2)(ii) has been changed to allow appraisals by any certified appraiser. The revised provision requires submission by the permittee of two independent appraisals by appraisers certified in the State where the property is located. Provisions also allow the regulatory authority the flexibility of having certified appraisers help in determining final, acceptable fair market value of property if the submitted appraisals are questioned. The regulatory authority is ultimately responsible for making the final determination of property value. {52312}

Section 806.12(h)(2)(iii)(A). -- This section proposed that attorneys evaluating a leasehold asset be competent and not company affiliated, as determined by the regulatory authority. This provision provides for an impartial evaluation of bond value. One commenter suggested that the regulatory authority has no jurisdiction over approving the competency of attorneys, who are professionals regulated by the courts. OSM agrees and has removed the requirement that the attorney be satisfactory to the regulatory authority, which implied a review of the qualifications of the lawyer by the regulatory authority.

Section 806.12(h)(2)(iii)(B). -- This section stated that an abstracting office must be satisfactory to the regulatory authority. A commenter suggested that under Section 806.12(h)(2)(iii)(B) the regulatory authority has no jurisdiction over approving the credentials of abstract offices who are authorized to transact business within the State, that they are regulated by another State agency-OSM agrees and has removed the requirement that an abstract office be satisfactory to the regulatory authority, and only requires that an abstracting office provide title certification.

Section 806.12(h)(3). -- This section provides that real property which is offered as security for bonds may be accepted only after the reclamation standards of phase II are completed on such lands. One commenter suggested that Section 806.12(h)(3) (which was proposed as Section 806.12(h)(2)(iii)(C)) be changed to allow land which is part of the permit area to be used as security under collateral bonding if not to be mined initially. It is stated that for many operators, particularly small-to medium-size companies, the most valuable, unencumbered asset available for bond collateral is the coal land to be mined. OSM agrees that coal land not yet mined or disturbed and land that has been mined, and on which reclamation standards of phases II and III are complete, have asset value for real-property purposes of collateral bonding. This is evident from the intent to include real property as collateral at its value after reclamation. However, OSM has stipulated that real property, if used for collateral, shall not be mined under any permit, since the continuous value may not be assured throughout the term of the bond. Additionally, land already mined within the permit area cannot be used as security for collateral bonding until after the land has been reclaimed to phase II standards. Section 806.12(h)(2)(iii)(C) has been redesignated as Section 806.12(h)(3) and reflects this position and has been incorporated into the rules as proposed.

Section 806.12(h)(4)(iv) [formerly Section 806.12(h)(2)(iv)(D)]. -- This Section restricted securities under personal property to negotiable securities of the U.S. Government, municipal bonds, and general State revenue bonds.

Commenters on this Section requested that other marketable securities may provide adequate value for bonding purposes, subject to regulatory-authority acceptance. One commenter suggested that "investment-grade" marketable securities be accepted as collateral under this Section. OSM has considered broadening the acceptance of collateral to this type of security in securing the obligation of the permittee under bond. OSM has decided that this suggestion is a good one and has determined that the marketable securities of the major publicly or privately held corporations and companies are valuable assets, the value of which at any given time may be readily determined. The use of securities as collateral does not extend to common or preferred stock, investments subject to a margin call, or any interest in commodities and securities which are not rated by a nationally recognized securities rating service. OSM has changed the wording of this proposed Section by adding a phase which leaves it up to the regulatory authority (1) to decide whether or not the to accept securities proposed for collateral bonding purposes which are not negotiable bonds of the U.S. Government or general revenue bonds of the State and (2) the determine the soundness and value of such securities and the margin (ratio of bond value to market value) which might be acceptable for bonding purposes, and has redesignated this Paragraph as 806.12(h)(4)(iv) for clarity. The only restrictions on the use of marketable securities under collateral bonding are the specific provision for the securities to be those of highest rating assigned by a nationally recognized securities rating service and that the business entity represented in the security not be directly affiliated with the mining operation. This change is also reflected in the amended definitions of collateral bonds under Section 800.5.

Section 806.12(h)(4)(v) [formerly Section 806.12(h)(2)(iv)(E)]. -- This Section required that certificates of deposit be federally insured and that the depository be acceptable to the regulatory authority. One commenter argued that limiting securities, other than U.S. Government securities used for collateral bonding, to only federally insured (FDIC/FSLIC) accounts is impractical, because a bond in the amount of tens of millions of dollars would require securities purchased from hundreds or thousands of different financial institutions. OSM disagrees, since as of early 1980, amounts of up to $100,000 are insured by the FDIC/FSLIC. In addition, State-chartered financial institutions have accounts insured for various amounts. Because the provision is available to all operators, OSM has decided to retain this provision, even if some operators, large ones in particular, encounter slight inconvenience. The value of the insurance -- reducing the risk to the regulatory authority -- outweighs the inconvenience of this requirement. Therefore, no change has been made. However, the Section has been redesignated as Section 806.12(h)(4)(v) from Section 806.12(h)(2)(iv)(E) as proposed.

Section 806.12(i). -- A new Section 806.12(i) has been added to clarify the bond value which may be accepted in the use of real and personal property, especially marketable accounts and securities as collateral. This provision is required to establish a basis for determining the acceptable bond value of the collateral. If the total market value were accepted as bond value, the regulatory authority might have inadequate funds available for reclamation under conditions of forfeiture, because of the costs incurred through liquidation, legal expenses, withdrawal penalty, or through fluctuation of the market value due to depreciation, devaluation, or lack of market. This rationale is similar to that used by lending institutions in accepting credit risks in issuing secured loans. The regulatory authority must determine acceptable margins of liquidation value to market value to ensure continued financial assurance throughout the bond period. Additionally, the regulatory authority must evaluate the liquidation plan as part of the analysis of the collateral value to establish the fees involved in converting the collateral into cash. It is assumed that this rationale will apply to all collateral including letters of credit, certificates of deposit, real and personal property, and marketable securities authorized under the final rules. The margin percentages would vary for differing collateral, with those most convertible to cash the highest. This Section is added in conjunction with the acceptance of collateral for purposes of broadening the scope of performance assurance available to coal mine operators. {52313}

SECTION 806.13 - ESCROW BONDING.

OSM proposed escrow bonding as an alternative means of generating bond collateral to cover extended liability in lieu of surety involvement, or paralleling a surety's involvement by compensating for additional increments under cumulative bonding, while having a constant surety bond. Escrow bonding is a form of collateral bonding, developed over a period of time through funds deposited with the regulatory authority or into an account payable only to the regulatory authority, on a coal-production, acreage-affected, or other similar basis. The provision was considered to allow flexibility in accepting bonding alternatives allowed by the Act which States may adopt at their discretion.

OSM believes that escrow bonding is a viable option and included this provision in the proposed rules, as stated in the preamble (45 FR 6028). OSM received two comments concerning escrow bonding. One industry commenter state that escrow bonding would not be a viable option for coal operators because it would tie up limited capital assets. While recognizing that some operators will not find the escrow-bond method viable for their operations, OSM believes that the benefits to other operators are sufficient to justify authorizing such an arrangement.

Escrow bonding is expected to supplement other bonding methods by replacing or adding bond coverage at a rate increasing with mining operations. The concept of escrow bonding as a supplement to other methods would provide the operator with (1) a method to develop a bond alternative which could be used to cover the liability period, (2) a method to develop a collateral bond in a short period to cover long-term facilities over the life of the operations and the subsequent liability period without imposing long-term involvement of surety companies, and (3) a method to compensate for bond increases due to inflation without renegotiating with the surety on all bond adjustments. An example of an escrow situation would occur is an operator posted a surety bond on the initial increment to be mined. By depositing an amount into an escrow account on the basis of production, the operator could establish collateral for the next increment. The original surety bond could remain constant throughout the life of the mine subject to other conditions of Section 806.12(e). When mining operations end and the entire permit area is in varying phases of reclamation, the escrow account could be sufficient to cover the amount of bond required for the extended period of liability. This could eliminate a surety's role during the extended-liability period by releasing the surety's liability through provisions of Section 807.11. This limited involvement of a surety would probably make it easier for an operator to obtain surety bonding. After reaching the end of the liability period, and approval by the regulatory authority, the balance of the escrow account would be released to the operator as with other collateral bonds.

The other comment, from a surety association, requested clarification of which bond would pay first under joint surety and escrow bond coverage if a bond were forfeited. It was also suggested that escrow funds be used initially to perform reclamation since the principal (operator) is primarily liable. With regard to the question as to which bond should pay first under joint surety and escrow bond coverage, OSM believes the parties involved should specify the order, as part of the bonding arrangement, in a binding agreement signed by the operator and surety. This determination should be made between the surety and the operator and be included in the surety contract, a copy of which is filed with the regulatory authority. The only criterion required by the regulatory authority is that the combination bond be sufficient to cover the full cost of reclamation. If the forfeited bond is in excess of the completed cost of reclamation, the residual money would be returned by the regulatory authority to the appropriate party.

On the basis of the foregoing discussion, OSM has elected to adopt the language proposed under Section 806.13, without change.

SECTION 806.14 - SELF-BONDING [ORIGINALLY SECTION 806.11(b)] .

Self-bonding was issued as part of the permanent regulatory program promulgating the statutory provisions of Section 509(c) of the Act which allow a permittee to self-bond under specific conditions. These conditions include a record of continuous operation and a satisfactory financial history. Conditions of bonding in general require sufficient indemnity or collateral for the regulatory authority to complete the reclamation operation if necessary under conditions of forfeiture. In the case of self-bonding, the regulatory authority must be satisfied the bond under forfeiture has a sufficiently high cash value or that attachable assets may be liquidated for use in contracting for reclamation. Self-bonding has been the subject of much criticism since it was originally proposed.

Comments on self-bonding rules varied, but the most substantive stated that the provisions as proposed lacked the financial assurances necessary to complete reclamation. Commenters felt that an unsecured bond was in violation of the Secretary's own Section 806.11(b). OSM received 50 comments on the proposed self-bonding regulations from 10 individuals and organizations. The general issues raised did not necessarily address the specific Sections which were opened, but changes were recommended for many of the provisions for self-bonding.

Some early commenters on the self-bonding regulations issued March 13, 1979, felt that the restrictions imposed in the regulations were unnecessarily severe, and that only the largest operators could consider this method. The surety industry feels if large operators are allowed to self-bond, they would no longer be among the surety industry's most desirable bonding clients.

The self-bonding rules published March 13, 1979, contained conditions which were intended to provide the degree of security necessary to meet the standard of ensuring that adequate funds would be available under forfeiture. The provisions require: (1) net worth to bond amount ratio of 6; (2) the operator to grant a security interest in collateral in favor of the regulatory authority; (3) submission of financial statements, including financial ratios; and (4) a signed agreement personally indemnifying the permittee, officers of corporations, or others signing the agreement. OSM received comments from many commenters including those writing surety bonds, environmentalists, regulators, and coal operators. The commenters felt that the provision for restricting the use of real and personal property to only self-bonding was discriminatory against small- and medium-sized operators, who would be unlikely to be able to meet the other qualifying provisions of self-bonding but who nevertheless have tangible assets in the form of real and personal property. To prevent such discrimination, OSM proposed to remove the real- and personal-property requirement from self-bonding and allow all operators/permittees to consider use of these assets as collateral bond.

Other commenters felt that the net-worth to bond-amount restriction was overly restrictive, by requiring standards of 6 times the bond amount to qualify for self-bonding. Therefore, OSM proposed to delete this Provision. Another aspect cited in the comments as restricting the use of self-bonding was the requirement for a 10-year history of continuous operation and financial history. OSM considered this issue for change, but failed to find adequate support from the documents reviewed. (See preamble 45 FR 6028.) {52314}

A number of commenters were concerned about the requirement for a spouse's signature on the indemnity agreement, since an individual could not force a spouse to sign. OSM proposed to clarify this requirement by requiring a spouse to sign only if involved in the business.

In addition to the comments on the specific provisions of self-bonding, commenters cited the length and complexity of the rules as confusing and in need of rearrangement. Therefore, OSM proposed this Section on self-bonding as a separate Section 806.14 to provided for this clarification, especially since the issue is included in a separate paragraph of the Act.

Among the most relevant comments received were those which stated that without the use of real and personal property as collateral the regulatory authority had no guarantee that funds would be available, especially under bankruptcy circumstances. Others felt that the use of an indemnity agreement alone would place financial and legal obligations on personal assets beyond the financial ability of the endorsees, and would not necessarily provide sufficient assets under forfeiture. It was pointed out that these persons would be signing as individuals who would be liable for financial assurance of the performance standards.

Other commenters questioned the need for highly detailed financial statements when securities and credit-rating services continually conduct financial analysis and continually analyze market indicates. Others pointed out that while

detailed provisions of self-bonding require financial data and interest in property, minimum standards for acceptance of ratios and for financial solvency were not specifically addressed.

Some commenters felt that self-bonding should be allowed for qualifying companies, so that the surety bonding market would be available for those who do not qualify. Sureties, on the other hand, stated that operators who could not self-bond under the OSM rules might not be considered for surety bonds, depending on self-bonding criteria of the regulatory authority.

A State regulatory authority pointed out that self-bonding without the requirement for collateral support does not comply with the provisions of the Act or Section 806.11(b) of the rules, which require adequate funds be available at all times for reclamation and that there be substantial economic incentives for compliance. An operator in financial distress would (1) not have adequate funds to forfeit by which to complete reclamation and (2) have no economic benefit to be gained by completing the reclamation.

Other commenters cited including a need to develop a rationale for reviewing self-bonding, and a method for screening the potential self-bonding applicant. Also, they felt that a permittee should be able to understand the basis for qualifying for self-bonding before deciding whether to apply.

Therefore, on the basis of the general lack of support of the self-bonding rules as proposed and the need to further evaluate the provisions, OSM has chosen to leave in place the rules as they were published on March 13, 1979 (44 FR 15387). OSM believes that self-bonding as adopted in the permanent program rules provide highly secure financial assurance that reclamation will be completed, because the indemnity agreement provides a financial interest in marketable assets if forfeiture occurs. OSM also believes that the addition of real and personal property as part of collateral bonds and the provision for escrow accounts and combined surety/escrow bonds provide additional methods of self-bonding which are available to all operators.

OSM considered three options in rejecting the proposed amendment to the rules proposed January 24, 1980: (1) To further revise the proposed rules to comply with the commenters' requests, which would probably require further public comment, (2) to delete self-bonding entirely, or (3) to reinstate the rules issued March 13, 1979, under the new Section 806.14 and further investigate and propose changes and modifications to correct identified deficiencies.

In considering these options, OSM felt that deleting the self-bonding rules entirely would delete a statutory requirement which, although criticized as being overly stringent, nevertheless is considered to provide the adequate degree of assurance the Act intends. Revising the proposed rules to provide adequate cash under forfeiture and to provide economic incentive requires reinstating of the security interest in real and personal property and qualification standards not in the proposed rule. This would further delay the issuance of this rulemaking by requiring further comment and analysis. Therefore, options 1 and 2 were rejected, and option 3 has been selected with the provision that OSM acknowledges the difficulties observed in the original self-bonding provisions and accepts all comments received during this rulemaking for consideration in evaluating further amendments to self-bonding.

OSM intends to conduct a study of alternatives to the original language and identification of implementing qualification guidelines. The proposed study will encompass methods to evaluate companies who should be eligible for self-bonding methodology for review of financial credentials, guidelines to establish qualifying financial ratios, the nature and effect of operating histories, collateral requirements, corporate and individual liability, risk-analysis techniques, and other specific elements of the detailed provisions in Section 806.14 not opened during this rulemaking. OSM will present the results of the study for public comment in a future rulemaking. Until revised, the provisions issued herein shall be used in any self-bonding program for surface coal mining operations.

OSM finds, based on the comments and discussion above, that self-bonding as proposed in the January 24, 1980 (45 FR 6028) rules, does not provide adequate financial assurance to the regulatory authority, and has decided to retain the rules governing self-bonding as they were promulgated March 13, 1979. A regulatory authority finding that amendments are necessary to self-bonding, and that demonstrates adequate financial assurances, can be submitted as a formal request for OSM consideration as a "State Window" under provisions of 30 CFR 731.13 and in accordance with alternative bonding systems under 30 CFR 806.11(b) of this notice.

As was proposed January 24, 1980, however, original Section 806.11(b) is redesignated as Section 806.14, Section 806.11(b)(1) becomes Section 806.14(a), and so forth throughout.

SECTION 806.17 - COMBINED SURETY/ESCROW BONDING.

Section 806.17 is added to the regulations as an extension of the use of escrow bonds in conjunction with surety coverage. This method resulted from comments from surety and industry to allow a short-term solution to surety liability. One industry commenter expressed concern over the restrictions imposed on the surety companies in writing bond coverage. These restrictions included the long-term nature of the bond and the noncancellation requirements. In a meeting with the Surety Association of America at the Department of the Interior on March 6, 1980, the surety representative expressed the following reasons for the surety industry's reluctance to issue bonds: (1) long-term commitment, (2) lack of control of bond amount due to adjustment for unforeseen reclamation costs, and (3) delay of bond release due to citizen involvement in the bond-release process. {52315}

The commenter cites, for example, the requirement that the regulatory authority not accept a surety bond unless it is noncancellable by the surety for any reason. The commenter sees this as an attempt by OSM to impose its own standards of insurable risks upon the surety industry and to force a merger of the obligations of the surety and the operator not for the life of a bonding contract negotiated at arm's length by the surety and the operator, but for the life of the mine plus up to 10 additional years. It is contended that this forced merger is excessive and unfair and that unless a mechanism is created to balance the projected cost of surety bonding with the projected revenues from providing such an instrument, surety companies will elect not to offer surety bonding.

In answer to these concerns of the surety industry, the commenter suggested a possible solution that would allow short-term bonding of a duration of 1 to 2 years. At the end of the initial period, the operator could replace the surety bond either by renewal or by posting another alternative bond acceptable to the regulatory authority.

OSM has reviewed this proposal and has determined that the provisions for long-term surety bonds must remain unchanged, because the Act requires bond coverage to extend until reclamation has been completed. Therefore, unless a specific alternative coverage is introduced to release a surety liability, the bond must extend for an indefinite term. However, the comment recommending that a provision be developed to allow short-term surety bonds led to the consideration of surety terms which, when combined with other demonstrate financial assurance such as an escrow account, would allow the surety company to avoid long-term commitment, could allow a constant surety bond amount by varying escrow deposit rates to cope with adjustments, the subject the escrow balance rather than the surety bond to public comment. This relief from the burden pointed out by the surety industry is similar to that of substitution of bonds in Section 805.15. This alternative would provide the conditions requested by the commenters, but it would obligate an operator to establish an escrow account to ensure adequate substitution upon surety-bond termination. The method as issued provides for a surety bond to be issued for a fixed term and fixed amount, with a guaranteed escrow replacement upon surety bond expiration. The surety bond may be reduced periodically or remain constant, but the total bond amount must equally or exceed the estimated reclamation costs. Conditions of forfeiture for the combined surety/escrow bond method would include failure to maintain a escrow in accordance with the established deposit schedule. The regulatory authority and surety would receive quarterly escrow statements.

Since this bonding method combines surety and escrow methods, but alters the terms of the surety bond from those in Section 806.12 (e), this alternative has been issued under Section 806.17, "Combined surety/escrow bonding," for adoption in State and Federal regulatory programs as deemed appropriate. OSM believes that this method will facilitate surety-industry involvement in the bonding of coal mine reclamation by eliminating some of the more objectionable restrictions.

PART 807 -- PROCEDURES, CRITERIA, AND SCHEDULE FOR RELEASE OF PERFORMANCE BOND

SECTION 807.12 - CRITERIA AND SCHEDULE FOR RELEASE OF PERFORMANCE BOND.

Section 807.12(a). -- As proposed, this Section would have allowed the regulatory authority discretion to release a portion or all of the performance bond upon completion of reclamation by providing that it "may" release, portions rather than that it "shall" release. Commenters requested that the wording of Section 807.12(a) be changed to require the regulatory authority to release specific bond amounts as each phase of reclamation is completed. The proposed language is consistent with Section 519(c) of the Act which states "may," indicating an intention that the regulatory authority have the

discretion to release. Thus, to adopt the commenters' suggestion and make release mandatory would be in conflict with the Act. Consequently, OSM feels that no change in required in this Section.

Section 807.12(b). -- This Paragraph sets forth the maximum amounts of bond which may be released by the regulatory authority as reclamation phases are achieved. The provisions as published March 13, 1979, allow 60 percent, 25 percent, and 15 percent release for phases I, II, and III, respectively. Industry comments have presented proposals for varying the percentage release and redefinition of the reclamation phases. Several commenters responded to the Department's request in the notice of proposed rules to present alternative bond-release percentages under this Section. Review of the proposals shows the following breakdowns of bond-release percentages:

Percentage of bond released

Phase	Existing Rules	Proposal		
	30 CFR 807.12	1	2	3
I Backfilling and grading, drainage control, and topsoil replacement	60	60*	60	60
Topsoil replacement and seeding	15			
II Successful vegetation	25	20	30	35
III Termination of liability	15	5	10	5

n1 Does not include topsoil replacement.

Permanent rule Section 807.12 interprets bond-release phase I as including the following states:

(a) Backfilling and regarding: Return of overburden material to achieve rough contour as set forth in the reclamation plan.

(b) Topsoil replacement: Return of the soil horizons which are capable of supporting vegetation, and fine grading of this stratum to finished contours.

(c) Drainage control: Construction of diversion ditches, swales, erosion-control structures, sediment control, and other aspects of fine grading required before initial planting.

In considering a separation of the initial reclamation phase into (1), backfilling, grading, and drainage control, and (2) topsoil replacement and seeding, the following proposals were made by commenters.

Proposal 1 would allow 60 percent of the bond to be released upon completion of backfilling and grading, 15 percent upon completion of topsoil replacement and initial planting, and 20 percent upon achievement of vegetative success, with 5 percent retained during the liability period.

The industry comments took the position that replacing topsoil and seeding and area should be considered as another phase, separate from backfilling, grading, and drainage control, because backfilling and grading can be performed continuously, whereas topsoiling and seeding are seasonal. They argue that under current rules, bond release on a backfilled and graded area must wait until topsoil replacement and drainage control have been achieved before any release is possible. Section 519(c)(1) of the Act clearly requires that an operator complete backfilling, regrading, and drainage control before 60 percent of the bond can be released. At the time of completion of backfilling operations alone, only a portion of the 60 percent could be released. Some States, in proposing additional phases of bond release, have specified 40 percent for backfilling and 20 percent for topsoil replacement. This interpretation coincides with the OSM interpretation of the Act. Therefore, OSM considers a 75-percent release of bond upon completion of backfilling, grading, and topsoil replacement, as specified in proposal 1, to be excessive. {52316}

Proposal 1 calls for retention of 5 percent of the bond for the extended-liability period as sufficient to repair any problems existing during the 5- or 10-year waiting period.

OSM believes that 5 percent of the total bond might be adequate for repairing isolated occurrences of vegetation failure if the funds were available on an average per-acre basis, but Section 509 of the Act requires sufficient funds for a third party to reestablish revegetation in the event of a failure and does not specify whether reparable or total vegetative failure has

occurred. The cost of seedbed preparation, seeding, fertilization, and any augmented practices to ensure vegetative success must be considered in developing the cost of reestablishing revegetation. Therefore, and amount of not less than the original cost to an operator of establishing the vegetation must be used as a basis for the amount retained. This vegetative portion of the bond must be sufficient to cover the contingency of vegetative failure after initial vegetation, as well as covering the initial cost to vegetate if the operator forfeits the bond before conducting initial vegetation.

Proposals 2 and 3 are similar to proposal 1 in that they propose variations in the phase I and phase II percentages. Proposal 2 would allow 30-percent release after successful vegetation, and proposal 3 would allow 35 percent. In addition, the amount to be retained during the liability period would be reduced to 10 percent and 5 percent, respectively.

These proposals request additional bond release at achievement of successful vegetation, which reduces the amount retained during the liability period.

Cost factors for contracting, the scale of operation, and area adjustments must be included in the percentage to be retained. Additionally OSM recognizes that proposals 2 and 3 request that the amount of performance bond to be held during the remainder of the liability period be reduced to 10 or 5 percent, respectively, of the total reclamation cost It is not apparent whether the 5-and 10-percent values proposed take into account the addition of topsoil, seedbed preparation, or other corrective action which might be required. Therefore, the present figure in the OSM regulations of 15 percent of the total estimated cost of reclamation appears to be justified, in light of the possibility that a State would be contracting for the reclamation including revegetation, administration, contracting expenses, contingency actions, and uncertainty as to the degree of corrective action necessary. To date, commenters have requested reduction of the amount retained from 15 percent to 10 percent or less, but no substantive data has been provided with which to evaluate the conclusion that a reduction is necessary. Therefore, proposals 1, 2, and 3 have been rejected, and no change in the percentages currently specified in Section 807.12 will be made in this rulemaking. Experience may prove the necessity for revising these percentages in the future, but, in the initial implementation of the regulatory program, OSM believes these amounts are realistic.

Section 807.12(b)(2). -- As proposed, this Section included a requirement governing the amount of bond to be retained to cover revegetation and construction of drainage-control structures on an increment or the entire permit area. A commenter pointed out that the requirement to include reconstruction of any drainage structure on the entire permit area may apply only if the bond covers the entire permit. The intent is to cover all drainage structures cumulatively under each separate increment. Failure to make this intent clear is an oversight, since the bond amount is calculated on an incremental basis and should include drainage structures only on the increment. Although the bond amount is computed to cover a specific increment, under conditions of forfeiture a bond on an increment may extend to the entire permit area. Therefore, language has been added to the final rule to reflect the cost of reconstructing drainage structures on the area covered by the bond.

Section 807.12(c). -- This Section as proposed eliminated the bond-release formula which tied final percentage released with achievement of phase III reclamation on the entire permit area. A commenter pointed out that there might be confusion as to the difference between release of bond and release of surety. The confusion occurs since liability periods, bond releases, and other milestones are applied to bond coverage. The surety liability covers the life of the mine, but no specific Section addresses when the surety liability terminates. The commenter recommended that a surety be released by an official written notice from the regulatory authority.

OSM feels that this provision would be consistent with the notification of surety in other Sections of Subchapter J. Section 805.13 requires that bond liability extend until reclamation operations have been completed and that the bond be released through provisions of Part 807. OSM feels that no amendment to the regulation is necessary since the suggested provision for notification can be found in Section 807.11(f)(2) and (3), where a regulatory authority is required to notify a permittee and other interested parties in writing of its decision to release or not to release all or a part of the performance bond. It is intended that the final bond-release notice and final release of the operator from the permit requirements also release surety liability.

Another commenter felt that this Section provides for an increment to be totally released from bond coverage after phase III reclamation has been achieved, even if the remaining increments of the permit area are in varying phases of mining reclamation or liability. A commenter pointed out that Section 807.12(c) appeared to release bond liability on an increment by releasing that increment from the permit area. The preamble for Section 807.12(44 FR 15121) incorrectly referred to release of an increment as part of the permit area after phase III reclamation was completed. However, OSM believes that the land area of a permit must remain intact unless amended through the permitting process. OSM intends this Section to

allow total release of bond coverage on an increment before completion of the liability period on the remaining bonded permit area. However, bond liability on any increment within the permit area extends to the entire permit area under conditions of forfeiture. Therefore, no increment can be totally released from the permit area until bond on the last increment is released, unless the permit is amended by the regulatory authority. The final rule reflects the intent of Section 808.12(c) requiring any incremental bond to extend to the entire permit area and requires that no increment be totally released from bond liability for the entire permit area until conditions of phase III reclamation have been met on the entire permit area. {52317}

PART 808 -- PERFORMANCE BOND FORFEITURE CRITERIA AND PROCEDURES

Sections 808.11(c), 808.12(d), and 808.13 . -- OSM proposed additional paragraphs under conditions of forfeiture under Sections 808.11(c), 808.12(d), and various Paragraphs of 808.13. No comments were received on these issues, and therefore the proposed rules are being adopted as final.

Section 808.12(c) . -- This Section requires that the liability of each bond on any portion of the permit area extend to the entire permit area under conditions of forfeiture, if reclamation funds exceeding those specified for a particular increment are required. The permanent program adopted on March 13, 1979, added this provision at the request of commenters but restricted coverage indirectly only to protection of the hydrologic balance. However, the specific reference to "hydrologic balance" was challenged. Plaintiffs in a suit in the District Court for the District of Columbia challenging some of the permanent program rules (In Re: Permanent Surface Mining Regulations Litigation, filed May 9, 1979, D.D.C.-Civil Action 79-1144) contended this restriction was unauthorized by the Act. The Department agreed and informed the Court that this provision will be amended to eliminate the restriction to hydrologic balance. Therefore, the proposed rule reflected the concept that any bond must extend to any condition on the entire permit area.

One comment concerning proposed Part 808 requested deletion of the last sentence in Section 808.12(c), which reads, "Liability under any bond covering any increment of the permit area may extend to the entire permit area." The commenter contended that the concept of incremental bonding is that portions of a bond are tied to specific portions of the permit area and therefore that there is no reason why, even though a complete reclamation plan may apply to the entire permit area, each incremental surety cannot suffice to cover each increment's reclamation independently. In the explanation of incremental bonding in the March 13, 1979, rules, the preamble discussion of Section 807.13 (44 FR 15121) stated that the important concept is that while the filing and release of bond liability may be incremental, any bond applicable to a permit extends to all acreage within the permit area. This is stated explicitly in Section 509 of the Act, which requires liability on any bond including separate increments to be conditional upon performance of all the reclamation. Therefore, the last sentence cannot be deleted.

STATEMENTS OF SIGNIFICANCE AND ENVIRONMENTAL IMPACT

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. The Department of the Interior has determined that amendment of the rules within the scope of this document will not significantly affect the qualify of the human environment. Accordingly, this action is not subject to the environmental impact statement requirements of the National Environmental Policy Act.

Dated: July 31, 1980.
Charles P. Eddy, Acting Assistant Secretary, Energy and Minerals .

SUBCHAPTER J -- BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS

PART 800 -- GENERAL REQUIREMENTS FOR BONDING OF SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER REGULATORY PROGRAMS

A. Section 800.5 is amended as follows:

1. The definition of collateral bond is revised to read in its entirety as set forth below.

SECTION 800.5 - DEFINITIONS.

COLLATERAL BOND means an indemnity agreement in sum certain deposited with the regulatory authority or executed by the permittee and supported by one or more of the following --

(1) The deposit of cash in one or more federally insured accounts, payable only to the regulatory authority upon demand;

(2) Negotiable bonds of the United States, a State, or a municipality, endorsed to the order of, and in the possession of, the regulatory authority;

(3) Negotiable certificates of deposit, payable only to the regulatory authority and in its possession;

(4) An irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only upon presentation by the regulatory authority;

(5) A perfected, first-lien security interest in real or personal property, in favor of the regulatory authority;

(6) Investment-grade rated securities, having the highest rating issued by a nationally recognized securities rating service, endorsed to the order of, and in the possession of, the regulatory authority, excluding all issues of the type traded on a commodity exchange such as contracts for future delivery of goods.

B. Section 800.11(b)(1) is amended as follows:

1. Paragraph (ii) is redesignated as Paragraph (iii).

2. New Paragraph (ii) is added to read in its entirety as set forth below.

SECTION 800.11 - REQUIREMENT TO FILE A BOND.

(b)(1) * * *

(ii) A cumulative bond schedule listing the areas covered by the bond and the sequence for release of acreage as it progresses through varying reclamation phases and for the addition of other acreage as it is affected. The amount of bond required to obtain a permit shall include the full reclamation cost of the initial area being affected; or

C. Section 800.13 is amended as follows:

1. Paragraph (a) is revised to read in its entirety as set forth below.

2. Paragraph (d) is revised to read in its entirety as set forth below.

SECTION 800.13 REGULATORY - AUTHORITY RESPONSIBILITIES.

(a) The regulatory authority shall prescribe and furnish forms for filing performance bonds.

(d) The regulatory authority may not accept a self-bond in lieu of a surety or collateral bond, unless the permittee meets the requirements of 30 CFR 806.14 and any additional requirements in the State or Federal program.

A new part 801, proposed January 24, 1980, is added in its entirety to read as set forth below .

PART 801 -- BONDING REQUIREMENTS FOR UNDERGROUND COAL MINES, COAL-PROCESSING PLANTS, ASSOCIATED STRUCTURES, AND OTHER COAL-RELATED LONG-TERM FACILITIES AND STRUCTURES

Authority: Sections 102, 201, 501, 503, 504, 507, 508, 509, 510, 515, 516, 519, and 701 of Pub. L. 95-87; 91 Stat. 448, 449, 467, 468, 470, 471, 477, 479, 480, 486, 495, 496, 501, and 516, (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1257, 1258, 1259, 1260, 1265, 1266, 1267, and 1269). {52318}

SECTION 801.1 - SCOPE.

This Part establishes bonding procedures applicable to long-term facilities, such as underground mines, coal-processing plants, refuse areas, and other long-term facilities and structures associated with surface and underground coal mining. Such permits may have several renewal terms, or may have a single permit term in excess of 5 years, so long as the surface area affected during the life of the facility remains basically unchanged.

SECTION 801.2 - OBJECTIVE

The objective of this Part is to set forth special bonding rules for long-term operations to account for differences between short-term and long-term operations and between surface and underground mines.

SECTION 801.4 - RESPONSIBILITIES.

The regulatory authority shall ensure that bond coverage is provided for long-term surface facilities and surface areas of underground mines subject to the requirements of this Chapter. Specific reclamation techniques required for underground mines and long-term facilities, such as the removal of deposits of coal fines, sealing of shafts and portals, and removal of structures, shall be considered in determining the amount of bond to complete the reclamation and as determined in the associated cost estimates.

SECTION 801.11 - APPLICABILITY.

(a) Operations subject to provisions of this Part are --

(1) Portions of underground coal mines which will continuously disturb the surface for a period in excess of 5 years and surface construction activities included under subsidence-control measures and mine-drainage treatment in 30 CFR 801.16;

(2) Coal-processing plants to be operated for more than 5 years from the date a permit is first issued under the regulatory program;

(3) Coal-refuse areas to be operated for more than 5 years;

(4) Coal-loading facilities to be operated for more than 5 years from the date a permit is first issued for it under the regulatory program; and

(5) Long-term coal-related facilities to be permitted for operation longer than 5 years in accordance with 30 CFR 785.21.

(b) Operations listed in Paragraph (a) of this Section, conducted within a permit area for a mine which includes areas or facilities not subject to this Part, may be bonded as a separate increment of the surface mine permit area. If bonded separately, provisions of this Part shall apply to that increment. If bonded as part of the permit area which includes areas or facilities not subject to this Part, bond liability shall continue in accordance with 30 CFR 805.13.

SECTION 801.12 - AMOUNT OF BOND REQUIRED.

(a) The regulatory authority shall determine the bond amount necessary to complete reclamation of the area in accordance with 30 CFR 805.11.

(b) The area considered in the reclamation plan shall include the entire area disturbed.

(c) The amount of bond necessary to obtain a permit is the entire performance bond required during the term of the permit.

SECTION 801.13 - PERIOD OF LIABILITY.

(a) The period of liability for every bond covering a long-term operation shall commence with issuance of a permit and extend until all reclamation, restoration, and abatement work under provisions of the permit have been completed, and the bond released in accordance with Part 807 or replaced in accordance with Paragraph (b) of this Section.

(b) To achieve the liability requirements for long-term operations, continuous bond coverage shall be provided. Bond coverage shall commence with issuance of a permit, cover the initial term of the bond, and be conditioned to extend, replace, or pay the full amount of the bond 120 days prior to the expiration of any bond term, which in no case shall be less than 5 years. Failure to extend or replace bond coverage not less than 120 days prior to expiration shall subject the bond to conditions of forfeiture under Part 808.

SECTION 801.14 - FORM OF BOND.

Performance bonding may be authorized by the regulatory authority in accordance with the methods listed in 30 CFR 806.11. An escrow account may be established on the basis of a coal-production rate, periodic-deposit schedule, or other similar schedule, so that replacement of surety bond with collateral bond in whole or in part may be authorized in accordance with 30 CFR 806.13. Upon development of full bond coverage under an escrow account, any surety bond or indemnity agreement may be released. All bonding methods shall comply with the provisions and conditions set forth in this Part.

SECTION 801.15 - APPLICABILITY OF OTHER SECTIONS.

Except to the extent that provisions of other Parts of Subchapter J conflict with this Part, all other portions of Subchapter J shall apply to bonding requirements for underground coal mining operations and long-term coal-related facilities subject to this Part.

SECTION 801.16 - SUBSIDENCE AND MINE DRAINAGE.

(a) 30 CFR 784.20 and 817.121 through 817.126 shall apply to the protection of surface-owner property rights against potential damage caused by unplanned subsidence. All measures undertaken to conform with 30 CFR 784.20(b) in the prevention of damage to surface facilities through planned subsidence shall be subject to performance bond coverage, and the estimated cost of such measures shall be included under 30 CFR 805.11. In addition, the bond liability shall extend to performance of the construction, site preparation, and relocations approved by the regulatory authority under 30 CFR 784.20(a). Release of bond coverage for construction of control measures to prevent subsidence shall be authorized only after final inspection, acceptance, and approval by the regulatory authority, and shall not be subject to the liability period of 30 CFR 805.13 or the bond-release criteria of 30 CFR 807.12. Procedures for seeking bond release for construction of surface measures shall be conducted in accordance with 30 CFR 807.11. Inspections of the construction of surface control measures shall be coordinated with the surface owner, if possible. If a surface owner refuses to allow an inspection, a

separate request to waive inspection shall be sent to the surface owner, by certified mail with return receipt requested. If the regulatory authority receives no response within 30 days of delivery of the notice, or if within such period a response is received which waives the inspection or denies reasonable access for inspection, the regulatory authority may assume that the inspection has been waived and the applicable portion of the bond may be released without inspection having occurred.

(b) Performance-bond liability shall include construction of planned impoundments, conveying systems, and treatment facilities for mine drainage in accordance with the standards of 30 CFR 816.42, 816.48, 816.50, 817.42, 817.48, and 817.50. Bond release for such facilities shall be authorized only after final inspection, acceptance, and approval by the regulatory authority and is not subject to the period of liability of 30 CFR 805.13 or the bond-release criteria of 30 CFR 807.12. Procedures for seeking bond release shall be conducted in accordance with 30 CFR 807.11. Bond liability with respect to mine drainage shall extend to the construction and ultimate removal of facilities described in the permit application or reclamation plan as associated with the treatment of mine drainage. Bond coverage for any subsequent revegetation on that area previously used as an impoundment shall be subject to liability and releases of 30 CFR 805.13, 807.11, and 807.12.The estimated bond amount computed under 30 CFR 805.11 need not include continuous treatment, monitoring, or potential unpredictable expenses as a result of mine drainage. {52319}

SECTION 801.17 - BOND FORFEITURE.

The regulatory authority shall forfeit a bond pursuant to this Part if --

(a) The operator has not filed a performance bond or other security as required under this Part, 120 days prior to bond expiration; or

(b) The regulatory authority determines that a permittee is subject to forfeiture under the criteria of 30 CFR 808.13(a).

PART 805 -- AMOUNT AND DURATION OF PERFORMANCE BOND

A. Section 805.13 is amended as follows:

1. Paragraphs (b)(1) through (b)(3) are revised to read in their entirety as set forth below.

2. Paragraph (c) is redesignated as Paragraph (d).

3. Paragraph (c) is added to read in its entirety as set forth below.

4. Paragraph (d) is redesignated as Paragraph (e) and is amended to read in its entirety as set forth below.
5. A new Paragraph (f) is added to read in its entirety as set forth below.

6. A new Paragraph (g) is added to read in its entirety as set forth below.

SECTION 805.13 - PERIOD OF LIABILITY.

(b)(1) In addition to the period necessary to achieve compliance with all requirements of the Act, this Chapter, the regulatory program, and the permit, the period of liability under performance bond shall continue for a minimum period in accordance with Paragraph (b)(2) of this Section, beginning after the last year of augmented seeding, fertilization, irrigation, or other work.

(2) The minimum period of liability shall continue for not less that 5 years in areas with more than 26.0 inches average annual precipitation, and for not less than 10 years in areas with 26.0 inches or less average annual precipitation. The period of liability shall begin again whenever augmented seeding, fertilization, irrigation, or other work is required or conducted on the site prior to bond release, except as noted in Paragraph (b)(3) of this Section.

(3) The regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of bond liability, if the permittee can demonstrate that discontinuance of such measures after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices may include pest and vermin control, pruning, and repair of any rills and gullies and any reseeding and/or

transplanting specifically necessitated by such actions, but shall be normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the area covered by the bond.

(c) A portion of a bonded area requiring extended liability because of augmentation may be separated from the original area and bonded separately upon approval by the regulatory authority. Before determining that extended liability should apply to only a portion of the original bonded area, the regulatory authority shall determine that such portion --

(1) Is not significant in extent in relation to the entire area under the bond; and

(2) Is limited to isolated, distinguishable, and contiguous portions of the bonded area and does not comprise scattered or intermittent occurrences throughout the bonded area.

(d) * * *

(e) If the regulatory authority issues a written finding approving a long-term intensive agricultural land use, the operation shall be exempt from the requirements of 30 CFR 816.111(a) or 817.111(a). Such a finding shall not constitute a grant of an exception of the bond-liability periods of this Section.

(f) The bond liability of the permittee shall include only those actions which the operator is obliged to take under the permit, including completion of the reclamation plan in such a manner that the land will be capable of supporting a postmining land use approved under 30 CFR 816.133(c) or 817.133(c). Actions of third parties which are beyond the control and influence of the operator and for which the operator is not responsible under the permit need not be covered by the bond.

(g) If an area is separated under Paragraph (c) of this Section, that portion shall be bonded separately and the applicable period of liability, in accordance with 30 CFR 805.13(b), shall commence anew. The period of liability for the remaining area shall continue in effect without extension. The amount of bond on the original bonded area may be adjusted in accordance with 30 CFR 805.14.

B. Section 805.14 is amended as follows:

1. Paragraph (a) is revised to read in its entirety as set forth below.

2. Paragraph (b) is revised to read in its entirety as set forth below.

SECTION 805.14 - ADJUSTMENT OF AMOUNT.

(a) The amount of the performance bond liability applicable to a permit shall be adjusted by the regulatory authority as the acreage in the permit area is revised, methods of mining operation change, standards of reclamation change, or when the cost of future reclamation, restoration, or abatement work changes. The regulatory authority shall notify persons involved in bond coverage of any proposed bond adjustments and provide those persons an opportunity for an informal conference on the adjustment. For purposes of this Section, a person involved in bond coverage shall include the permittee, the surety, and any other person with a property interest in collateral posted under this Subchapter who has in writing to the regulatory authority requested such notification at the time the collateral is posted or the interest is acquired, whichever occurs later. The regulatory authority shall review each outstanding performance bond at the time permit reviews are conducted under 30 CFR 788.11, and shall reevaluate those performance bonds in accordance with the standards in 30 CFR 805.11.

(b) A permittee, surety, or any person with property interest in collateral offered as bond coverage may request reduction of the required performance bond amount upon submission of evidence to the regulatory authority proving that the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the regulatory authority if it has to complete the reclamation and therefore warrants a reduction of the bond amount. The request shall be considered as a request for partial bond release in accordance with the procedures of 30 CFR Part 807 of this Chapter.

PART 806 -- FORM, CONDITIONS, AND TERMS OF PERFORMANCE BONDS AND LIABILITY INSURANCE

A. Section 806.11 is amended as follows:

1. Paragraph (a) is revised to read in its entirety as set forth below.

2. Paragraph (b) is redesignated as Section 806.14 without text change.

3. Paragraph 806.11(c) is redesignated as Section 806.11(b). {52320}

SECTION 806.11 - FORM OF THE PERFORMANCE BOND.

(a) The form of the performance bond shall be prescribed by the regulatory authority in accordance with the provisions of 30 CFR Parts 805 and 806. The regulatory authority may allow --

(1) A surety bond,
(2) A collateral bond,
(3) An escrow account,
(4) Self-bonding,
(5) Combined surety/escrow bonding, or
(6) A combination of any of these bonding methods.

B. Section 806.12 is amended as follows:

1. Paragraph (e)(6)(iii) is revised to read in its entirety as set forth below.

2. Paragraph (g)(2) is revised to read in its entirety as set forth below.

3. Paragraph (g)(7)(iii) is revised to read in its entirety as set forth below.

5. Paragraph (h) is added to read in its entirety as set forth below.

6. A new paragraph (i) is added to read in its entirety as set forth below.

SECTION 806.12 - TERMS AND CONDITIONS OF THE BOND.

(e) * * *

(6) * * *

(iii) Upon the incapacity of a surety by reason of bankruptcy, insolvency, or suspension or revocation of its license, the permittee shall be deemed to be without bond coverage in violation of 30 CFR 800.11(b). The regulatory authority shall issue a notice of violation against any operator who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed 90 days. During this period the regulatory authority shall conduct weekly inspections to ensure continuing compliance with other permit requirements, the regulatory program, and the Act. Such notice of violation, if abated within the period allowed, shall not be counted as a notice of violation for purposes of determining a "pattern of willful violation" under 30 CFR 843.13 and need not be reported as a past violation in permit applications under 30 CFR 778.14 or 782.14. If such a notice of violation is not abated in accordance with the schedule, a cessation order shall be issued.

(g) Letters of credit shall be subject to the following conditions:

(2) Letters of credit shall be irrevocable during their terms. The regulatory authority may approve the use of letters of credit as security in accordance with a schedule approved with the permit. Any bank issuing a letter of-credit for the purposes of this paragraph shall notify the regulatory authority in writing at least 90 days prior to the maturity date of such letter of credit or the expiration of the letter of credit agreement. Letters of credit utilized as security in areas requiring

continuous bond coverage shall be forfeited and collected by the regulatory authority if not replaced by other suitable evidence of financial responsibility at least 30 days before the expiration date of the letter of credit agreement.

(7) * * *

(iii) Upon the incapacity of a bank by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the permittee shall be deemed to be without bond coverage in violation of 30 CFR 800.11(b). The regulatory authority shall issue a notice of violation against any operator who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed 90 days. During this period the regulatory authority shall conduct weekly inspections to ensure continuing compliance with other permit requirements, the regulatory program, and the Act. Such notice of violation, if abated within the period allowed, shall not be counted as a notice of violation for purposes of determining a "pattern of willful violation" under 30 CFR 843.13 and need not be reported as a past violation in permit applications under 30 CFR 778.14 or 782.14. If such a notice of violation is not abated in accordance with the schedule, a cessation order shall be issued.

(h) Read and personal property posted as a collateral bond shall meet the following criteria:

(1) The applicant shall grant the regulatory authority a mortgage or perfected first-lien security interest in real or personal property.

(2) The instrument creating such mortgage or security interest shall vest such interest in the regulatory authority so as to secure the right and power in the regulatory authority to immediately attach said property concurrent with the issuance of a notice of forfeiture under 30 CFR Part 808 and to sell or otherwise dispose of the property by a public or private transaction, and to establish the regulatory authority as the sole secured creditor with respect to such property, so as to assure the regulatory authority of a preferred claim over all other creditors in case of bankruptcy. For classes of property with respect to which a preferred claim cannot be maintained against subsequent bona fide purchasers for value under the Uniform Commercial Code, the instrument shall require possession of the property by the regulatory authority. The property subject to the security interest shall not be subject to any conflicting or prior security interest. The instrument creating the interest in real property shall be recorded as authorized for fee interests. The instrument creating the security interest in personal property shall be recorded in accordance with, and otherwise conform to, the requirements of the Uniform Commercial Code for perfecting a security interest in the State. In order for the regulatory authority to evaluate the adequacy of the property offered to satisfy this requirement, the applicant shall submit a schedule of the real or personal property which shall be pledged to secure the obligations under the indemnity agreement. The schedule shall include --

(i) A description of the property;

(ii) The fair market value as determined by at least two independent appraisals conducted by appraisers certified in the State in which the property is located. The reasonable expense of the appraisals shall be borne by the permittee, and final acceptance of the value of property for bonding purposes shall be subject to regulatory-authority determination and shall be based on findings by appointed appraisers when deemed necessary;

(iii) Proof of the mortgagor's possession of, and title to, the unencumbered real property within the State which is offered to secure the obligations under the bond. Such proof shall include --

(A) If the interest arises under a Federal or State lease, a status report prepared by a non-affiliated attorney competent to evaluate the asset, and an affidavit from the owner in fee establishing that the leasehold can be transferred to the regulatory authority upon forfeiture; and

(B) If the title is in fee, a title certificate or similar evidence of title and encumbrances prepared by an abstract office authorized to transact business within the State.

(3) The property may include land which is part of the permit area only after reclamation standards of phase II are met on such land. The bonding value of land within a permit area may not exceed 85 percent of the appraised value if reclaimed to standards of phase III reclamation, based on the value of surrounding land less the value for any coal in place and the current uses of the land. Land pledged as security shall not be mined under any permit.

(4) Proof that the person granting the security interest holds possession of, and title to, personal property within the State which is offered to secure the obligation of the permittee under the bond. Evidence of such ownership shall be submitted in a form satisfactory to the regulatory authority. The regulatory authority may accept a perfected first-lien security interest in negotiable bonds of the U.S. Government, general revenue bonds of the State, municipal bonds, or rated marketable securities, excluding commodity issues, of non-affiliated companies registered under the Federal Securities Act, which are rated at the highest rating offered by a nationally recognized securities rating service. The ratio of bond value to market value of each security or bond shall be determined by the regulatory authority on the basis of its marketability and a financial analysis. The personal property offered shall not include -- {52321}

(i) Property in which a security interest is held by any other person;

(ii) Goods which the operator sells in the ordinary course of his or her business;

(iii) Fixtures;

(iv) Securities which do not meet the standards of Paragraph 806.12(h)(4); or

(v) Certificates of deposit which are not federally insured or are issued by a depository that is unacceptable to the regulatory authority.

(i) The estimated bond value of all collateral posted as bond assurance under 30 CFR 806.12(f), (g), and (h) shall be subject to a margin -- bond value to market value ratio -- determined by the regulatory authority. This margin shall reflect legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the regulatory authority in performing reclamation. The bond value of collateral may be evaluated at any time, but shall be evaluated as part of permit renewal. In no case shall the bond value exceed the market value.

C. Section 806.13 is amended as follows:

1. Section 806.13 is redesignated as Section 806.15.

2. Section 806.13 is added to read in its entirety as set forth below.

SECTION 806.13 - ESCROW BONDING.

(a) The regulatory authority may authorize the operator to supplement a bonding program through the establishment of an escrow account deposited in one or more federally insured accounts payable on demand only to the regulatory authority or deposited with the regulatory authority directly. Contributions to the account may be based on acres affected or tons of coal produced or any other rate approved by the regulatory authority. In all cases, the total bond including the escrow amount, as determined by the regulatory authority in the bonding schedule, shall not be less that the amount required under 30 CFR Part 805 including any adjustments, less amounts released in accordance with 30 CFR Part 807.
(b) Escrow funds deposited in federally insured accounts shall not exceed the maximum insured amount under applicable Federal insurance programs such as by FDIC or FSLIC.

(c) Interest paid on an escrow account shall be retained in the escrow account and applied to the bond value of the escrow account unless the regulatory authority has approved that the interest be paid to the operator. In order to qualify for interest payment, the operator shall request such action in writing during the permit-application process under 30 CFR 800.11.

(d) Certificates of deposit may be substituted for escrow accounts upon approval of the regulatory authority. Provisions of 30 CFR 806.12(f) shall apply to certificates of deposit as a collateral bond.

D. Section 806.14 is amended as follows:

1. Section 806.14 is redesignated as Section 806.16.

2. Section 806.14, "Self-bonding," is redesignated from Section 806.11(b) to read in its entirety as set forth below.

SECTION 806.14 - SELF-BONDING

(a) The regulatory authority may accept a self-bond from the applicant under the following conditions:

(1) The applicant shall designate the name and address of a suitable agent to receive service of process in the State where the surface coal mining operation is located.

(2) The applicant, or the applicant's parent organization in the event the applicant is a subsidiary corporation, has a net worth, certified by a certified public accountant, of no less than six times the total amount of self-bond obligations on all permits issued to the applicant in the United States for surface coal mining and reclamation operations.

(3) The applicant grants the regulatory authority a mortgage or security interest in real or personal property located in the State which shall have a fair market value equal to or greater than the obligation created under the indemnity agreement.

(4) The instrument creating such mortgage or security interest shall vest such interest in the regulatory authority so as to secure the right and power in the regulatory authority to immediately attach said property concurrent with the issuance of a notice of forfeiture under Part 808, and to sell or otherwise dispose of the property by a public or private transaction, and to establish the regulatory authority as the sole secured creditor with respect to such property, so as to assure the regulatory authority of a preferred claim over all other creditors in case of bankruptcy. For classes of property with respect to which a preferred claim cannot be maintained against subsequent bona fide purchasers for value under the Uniform Commercial

Code, the instrument shall require possession of the property by the regulatory authority. The property subject to the security interest shall not be subject to any conflicting or prior security interest. The instrument creating the interest in real property shall be recorded as authorized for fee interests. The instrument creating the security interest in personal property shall be recorded in accordance with, and otherwise conform to, the requirements of the Uniform Commercial Code for perfecting a security interest in the State. In order for the regulatory authority to evaluate the adequacy of the property offered to satisfy this requirement, the applicant shall submit a schedule of the real or personal property which will be pledged to secure the obligations under the indemnity agreement. The schedule shall include --

(i) A description of the property;

(ii) The value of the property. The property shall be valued at fair market value as determined by an appraisal conducted by appraisers appointed by the regulatory authority. The appraisal shall be expeditiously made, and a copy thereof furnished to the regulatory authority and the permittee. The reasonable expense of the appraisal shall be borne by the permittee; and

(iii) Proof of the mortgagor's possession of, and title to, the unencumbered real property within the State which is offered to secure the obligations under the bond. Such proof shall include --

(A) If the interest arises under a Federal or State lease, a status report prepared by an attorney, satisfactory to the regulatory authority as disinterested and competent to so evaluate the asset, and an affidavit from the owner in fee establishing that the leasehold could be transferred to the regulatory authority upon forfeiture; {52322}

(B) If title is in fee, a title certificate or similar evidence of title and encumbrances prepared by an abstract office authorized to transact business within the State and satisfactory to the regulatory authority; and

(C) The property shall not include any lands in the process of being mined, reclaimed, or the subject of this application. The operator may offer any lands the bonds for which have been released. In addition, any land used as security shall not be mined while it is security.

(iv) Proof that the person granting the security interest holds possession of, and title to, personal property within the State which is offered to secure the obligation of the permittee under the bond. Evidence of such ownership shall be submitted in a form satisfactory to the regulatory authority. The personal property offered shall not include --

(A) Property in which a security interest is held by any person;

(B) Goods which the operator sells in the ordinary course of his or business;

(C) Fixtures;

(D) Securities which are not negotiable bonds of the U.S. Government or general revenue bonds of the State;

(E) Certificates of deposit which are not federally insured or are issued by a depository that is unacceptable to the regulatory authority.

(5) The applicant, or the applicant's parent organization in the event the applicant is a subsidiary corporation, shall have demonstrated to the satisfaction of the regulatory authority a history of financial solvency and continuous operation as a business entity for 10 years prior to filing th application. For purposes of this Paragraph, such demonstration shall include a financial statement in sufficient detail to allow the regulatory authority to determine whether it is reasonable to predict from the ownership patterns and financial history of the applicant that it will be financially capable of completing all reclamation requirements throughout the life of the surface coal mining and reclamation operation. Such statement shall include, at the minimum --

(i) Identification of operator by --

(A) For corporations, name, address, telephone number, State of incorporation, principal place of business, principal office in the State where the operation is located, the name, title, and authority of persons signing the application, and a statement of authority to do business in the State where the operation is located; and

(B) For all other forms of business enterprises, name, address, and telephone number and statement of how the enterprise is organized, law of the State under which it is formed, place of business, relationship and authority of the person signing the application, and principal office in the State where the operation is located;

(ii) Estimated amount of bond likely to be required after approval of the permit which will be determined in accordance with 30 CFR Part 805, and the estimated maximum liability likely to be required during the life of the mine;

(iii) History of other bonds procured by the operator for mining operations in any State, including --

(A) Names of sureties, if any, for outstanding bonds;

(B) Amounts of outstanding bonds;

(C) Name of any surety which denied any bond; and

(D) Unsatisfied claims against any bond;

(iv) Brief chronological history of business operations conducted within the last 10 years, including information showing --

(A) Continuous operation for the 10-year period, and

(B) The jurisdiction within which each operation has been conducted;

(v) A financial statement, including --

(A) Audited financial statements prepared and certified by a disinterested independent certified public accountant. All statements shall be prepared following generally accepted principles of accounting and shall include --

(1) A common-size comparative balance sheet which shows assets, liabilities, and owner's equity for the preceding 10-year period. The regulatory authority shall have the discretion to increase this length of time to any period which is necessary to show financial solvency and continuous operation. The common-size comparative balance sheet shall be detailed with regard to owner's equity, especially retained earnings, so as to set forth a series of retained-earnings statements showing the changes that have occurred in retained earnings during the required period of time;

(2) A common-size comparative income statement which shows all revenues and expenses for the preceding 10-year period or for such longer time as is required for the common-size comparative balance sheet; and

(3) A statement of the operator's working capital and an analysis of assets and liabilities which shall include the following calculation for each year covered by the common-size comparative balance sheet and income statement --

(i) A schedule showing the percentage of each classification of current assets to total current assets;

(ii) The current ratio;

(iii) The acid-test ratio;

(iv) The liquidity ratio;

(v) The asset ratio; and

(vi) The return on investment;

(4) In addition to the above, all ratios must be calculated with the bond amount added to the operator's current or total liabilities; and

(5) A ratio of the operator's capital assets subject to a mortgage or security interest to those liabilities to which the assets are subject. If the offer of real property or collateral for the bond will alter this ratio, this shall be illustrated;

(B) A satisfactory basis to compare all ratios submitted pursuant to (A) above.

(C) The regulatory authority shall have the right to challenge, prohibit, or prescribe the inclusion of any specific item or the value thereof within any of the above statements or ratios. If the value is challenged, the regulatory authority shall appoint an appraiser or appraisers to value the item. Any such appraisal shall be expeditiously made, and a copy thereof furnished to the regulatory authority and the permittee. The reasonable expense of the appraisers shall be borne by the operator. The findings of the appraisal shall be final and binding.

(D) A final determination by an independent certified public accountant regarding the operator's ability to satisfactorily meet all obligations and costs under the proposed reclamation plan for the life of the mine; and

(E) If the regulatory authority deems necessary, evidence of financial responsibility through letters of credit or a rating of securities issued to the applicant by a recognized national securities rating company;

(vi) A statement listing any liens filed on the assets of the permittee or applicant in any jurisdiction in the United States, actions pending or judgments rendered within the last 10 years against the permittee or applicant but not satisfied, and petitions or actions in bankruptcy including actions for reorganization. Each such lien, action petition, or judgment shall be identified by the named parties, the jurisdiction in which the matter was filed, and the case, file, and final disposition or current status of any action still pending; and

(vii) A statement listing any notices issued by the Securities and Exchange Commission or proceedings initiated by any party alleging a failure to comply with any public disclosure or reporting requirement under the securities laws of the United States. Such statement shall include a summary of each such allegation, including the date, the requirement alleged to be violated, the party making the allegation, and the disposition or current status thereof. {52323}

(6)(i) The indemnity agreement has been executed by the applicant, and said agreement has also been executed by --

(A) If a corporation, two corporate officers who are authorized to sign the agreement by a resolution of the board of directors, a copy of which shall be provided;

(B) To the extent that the history or assets of a parent organization are relied upon to make the showings of this Part, the parent organization and every parent organization of which it is a subsidiary, whether first-tier, second-tier, or further removed, in the form of (A) above;

(C) If the applicant is a partnership, all of its general partners and their parent organization or principal investors; and

(D) If the applicant is a married individual, the applicant's spouse;

(ii) The name of each person who signs the indemnity agreement shall be typed or printed beneath the signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he or she signs the indemnity agreement;

(iii) The indemnity agreement shall be a binding obligation, jointly and severally, on all who execute it;

(iv) For purposes of this Paragraph, principal investor or parent organization means anyone with a 10-percent or more beneficial ownership interest, directly or indirectly, in the applicant.

(7) If at any time the conditions upon which the self-bond was approved no longer prevail, the regulatory authority shall require the posting of a surety or collateral bond before mining operations may continue.

G. A new Section 806.17, "Combined surety/escrow bonding," is added to read in its entirety as set forth below.

SECTION 806.17 - COMBINED SURETY/ESCROW BONDING.

(a) The regulatory authority may accept a combined surety/escrow bonding schedule provided that --

(1) A surety bond payable to the regulatory authority is posted in the amount determined under 30 CFR 805.11 for reclamation of each successive increment, and

(2) An interest-bearing escrow account payable to the regulatory authority with a predetermined deposit amount and frequency is established.

(b) Conditions of the combined surety/escrow bonding method shall be as follows:

(1) Surety bond.

(i) The term of the surety bond shall be not less than 2 years.

(ii) The amount of the surety bond shall always be sufficient to cover the difference between the escrow balance and the total reclamation cost.

(iii) The surety bond may be reduced in amount, but the liability remaining shall depend on the escrow deposit rate which shall be subject to provisions of 30 CFR 805.14 and 806.15.

(iv) The surety bond shall be noncancellable by the surety during the bond term.

(v) Surety-bond coverage may be released by the regulatory authority without applying the bond-release criteria of 30 CFR Part 807 at any time during the bond term, provided provisions of Paragraph (b)(2)(vi) of this Section are met or are in accordance with the provisions of bond replacement under 30 CFR 806.15.

(vi) The surety bond is subject to the conditions of bond forfeiture of 30 CFR Part 808, including noncompliance with the escrow-account provisions of Paragraph (b)(2).

(2) Escrow account.

(i) The terms and conditions of the escrow account shall be developed jointly by the operator, surety, and regulatory authority. For the purposes of this Section, the development of the escrow account shall be based on a production basis in an amount not less than that required to make the escrow account equal to or greater than the bond requirement within the term of the surety bond as agreed on jointly by the operator, the surety, and the regulatory authority. Deposits to the escrow account by the operator shall be made monthly and so reported to the regulatory authority. Failure to make deposits on schedule shall be just cause for action by the regulatory authority.

(ii) A certified escrow-account balance statement shall be provided quarterly to the surety and the regulatory authority.

(iii) Provisions of the escrow account shall be in accordance with 30 CFR 806.13.

(iv) The deposit amount shall be adjusted to provide for changing reclamation costs in accordance with 30 CFR 805.14. However, when the escrow account equals or exceeds the total bonding amount, the monthly payment of the operator shall continue, at the option of the regulatory authority, in an amount necessary to provide for any foreseeable adjustments.

(v) The escrow account shall be subject to the bond-forfeiture conditions of 30 CFR Part 808.

(vi) The escrow-account balance shall equal the initial bond amount plus any adjustments required by Paragraph (b)(2)(i), 120 days prior to surety-bond termination, unless the total bond amount required has been previously reduced through the bond-release procedures of 30 CFR Part 807.

(vii) Release of liability under the escrow account shall be subject to the provisions of 30 CFR Part 807.

(c) Provisions of 30 CFR Part 807 may be applied to both surety-and escrow-bond coverage during the bond term.

(d) The surety/escrow combination may be repeated successively or amended during the term by replacing the escrow account with a surety bond, and reestablishing the escrow terms and deposit rate, subject to regulatory-authority approval.

PART 807 -- PROCEDURES, CRITERIA, AND SCHEDULE FOR RELEASE OF PERFORMANCE BOND

A. Section 807.12 is amended as follows :

1. Paragraph (a) is revised to read in its entirety as set forth below.

2. Paragraph (b) is revised to read in its entirety as set forth below.

3. Paragraph (c) is revised toe rad in its entirety as set forth below.

4. Paragraph (d) is revised to read in its entirety as set forth below.

5. Paragraph (e)(3) is revised to read in its entirety as set forth below.

SECTION 807.12 - CRITERIA AND SCHEDULE FOR RELEASE OF PERFORMANCE BOND.

(a) The regulatory authority may release portions of the liability under performance bonds applicable to the permit area following the completion of reclamation phases as defined is Paragraph (e) of this Section.

(b) The maximum liability of performance bonds applicable to an increment or permit area which may be released shall be calculated on the following basis:

(1) Release of an amount not to exceed 60 percent of the total bond amount on the increment or permit area upon completion of phase I reclamation.

(2) Release of an additional amount not to exceed 25 percent of the total original bond amount on the permit area or an increment upon completion of phase II reclamation, but in all cases the amount remaining shall be sufficient to reestablish vegetation and reconstruct any drainage structures.

(3) Release of the remaining portion of the total performance bond on the increment or permit area after standards of phase III reclamation have been attained and final inspection and procedures of 30 CFR 807.11 have been satisfied. {52324}

(c) The regulatory authority may choose to release all bond coverage for an increment if the phase III reclamation of the increment is complete. The portion of the permit area being released from bond coverage shall be capable for supporting the proposed postmining land use independent of the successful completion of the reclamation of portions of the permit area still under bond or not yet initially disturbed. No increment shall be totally released from the permit area until conditions of phase III reclamation for the last increment of the permit area have been met.

(d) The regulatory authority shall require performance-bond liability, applicable to the permit area of an increment, in the amount necessary to --

(1) Allow someone other than the operator to complete the approved reclamation plan, achieving compliance with the Act, this Chapter, the regulatory program, and the permit;

(2) Allow someone other than the operator to abate any significant environmental harm to air, water, or land resources, or danger to public health and safety prior to release of the land under the terms of the permit;

(3) Achieve the capability of supporting any alternative postmining land-use plan proposed in the permit, consistent with 30 CFR 816.116, 816.133, 817.116, and 817.133 of this Chapter, including such measures as may be necessary in the event the permittee fails to undertake development within the 2 years required by 30 CFR 806.116(b)(3)(ii) or 817.116(b)(3)(ii) of this Chapter; and

(4) Fulfill the minimum bond amount of $10,000 as required by 30 CFR 805.12.

(e) * * *

(3) Phase III reclamation shall be deemed to have been completed when --

(i) The permittee has successfully completed all surface coal mining and reclamation operations in accordance with the approved reclamation plan so that the land is capable of supporting any postmining land use approved pursuant to 30 CFR 816.133 or 817.133;

(ii) The permittee has achieved compliance with the requirements of the Act, this Chapter, the regulatory program, and the permit; and

(iii) The applicable liability period under Section 515(b)(20) of the Act and 30 CFR 805.13(b) of this Subchapter has expired.

PART 808 -- PERFORMANCE BOND FORFEITURE CRITERIA AND PROCEDURES

A. Section 808.11 is amended as follows :

1. Paragraph (c) is added to read in its entirety as set forth below.

SECTION 808.11 - GENERAL.

(c) The regulatory authority may allow the surety to complete the reclamation plan if the surety can demonstrate the ability to complete the reclamation plan, including achievement of the capability to support the alternative postmining land use approved by the regulatory authority. No bond shall be released, except for partial releases authorized under 30 CFR 807.11, until successful completion of all reclamation under the terms of the permit, including applicable liability periods of 30 CFR Part 807.

B. Section 808.12 is amended as follows :

1. Paragraph (c) is revised to read in its entirety as set forth below.

2. Paragraph (d) is added to read in its entirety as set forth below.

SECTION 808.12 - PROCEDURES.

(c) The regulatory authority may forfeit any or all bonds deposited for an entire permit area or any increment thereof in order to satisfy 30 CFR 808.11-808.14. Liability under any bond covering any increment of the permit area shall extend to the entire permit area.

(d) The regulatory authority shall utilize funds collected from bond forfeiture to complete the reclamation plan on the permit area on which bond coverage applies, and to cover associated administrative expenses.

C. Paragraph 808.13(a) is amended as follows :

1. Paragraphs (a)(1) through (3) are added to read in their entirety as set forth below.

SECTION 808.13 - CRITERIA FOR FORFEITURE.

(a) * * *

(1) The permittee has violated any of the terms or conditions of the bond and has failed to take corrective action;
(2) The permittee has failed to conduct the surface mining and reclamation operations in accordance with the Act, the conditions of this Chapter, the regulatory program and the permit within the time required, and the regulatory authority has determined that it is necessary, in order to fulfill the requirements of the permit and the reclamation plan, to have someone other than the operator correct or complete reclamation;
(3) The permit for the area under the bond has been revoked, unless the operator or surety assumes liability for completion of the reclamation work and is, in the opinion of the regulatory authority, diligently and satisfactorily performing such work; or

(Sections 102, 201(c), 501(b), 503, 504, 507, 508, 509, 510, 515, 516 and 519, Pub. L. 95-87, 91 Stat. 448, 449, 468, 470, 471, 477, 478, 479, 480, 486, 495, and 501 (30 U.S.C. 1201, 1202, 1211, 1251, 1253, 1254, 1257, 1258, 1259, 1260, 1265, 1266, and 1269))

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